

# **EXHIBIT 96**

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

\* \* \* \* \*

AUTHENTICOM, INC.

Plaintiff,

-vs-

Case No. 17-CV-318-JDP

CDK GLOBAL, INC., LLC  
and THE REYNOLDS and  
REYNOLDS COMPANY,

Madison, Wisconsin  
June 27, 2017  
1:50 p.m.

Defendants.

\* \* \* \* \*

STENOGRAPHIC TRANSCRIPT-SECOND DAY OF EVIDENTIARY HEARING  
**AFTERNOON SESSION**  
HELD BEFORE THE HONORABLE JAMES D. PETERSON,

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1 THE CLERK: This Honorable Court is again in  
2 session. Please seated and come to order.

3 THE COURT: Okay. I understand we're ready to  
4 begin the defendants' case?

5 MS. GULLEY: Yes, Your Honor.

6 THE COURT: And remind me how many witnesses you  
7 say you have?

8 MS. GULLEY: Six.

9 THE COURT: Six. All right. So here's my  
10 proposal to you: I do want to hear your closing  
11 arguments. If you can get six witnesses done by five  
12 o'clock, I think that would be nearly a miracle. So what  
13 I'm going to suggest is that we get through the witnesses  
14 today -- I don't know if you have a time estimate for me,  
15 but just based on what we've done so far, six witnesses  
16 probably are not going to get done in four hours -- three  
17 hours. So I'm going to suggest that we do the witnesses  
18 and then come back tomorrow morning and do your closing  
19 arguments to me first thing in the morning.

20 MS. GULLEY: That's fine, Your Honor.

21 THE COURT: Okay?

22 MR. MILLER: Fine, Your Honor.

23 THE COURT: It's probably disruptive to your  
24 lives, but I don't see a reasonable alternative. What  
25 I'd also like to do maybe at the end of the day, I can

1 highlight for you some of my concerns and that might help  
2 you prepare more cogent closing arguments anyway.

3 All right. So let's proceed that way.

4 MS. GULLEY: Defendants call Robert Schaefer.

5 THE COURT: Very good.

6 **ROBERT SCHAEFER, DEFENDANTS' WITNESS, SWEORN**

7 MS. GULLEY: May I approach, Your Honor?

8 THE COURT: Yes.

9 DIRECT EXAMINATION

10 BY MS. GULLEY:

11 Q Good afternoon, Mr. Schaefer.

12 A Good afternoon.

13 Q Would you introduce yourself for the Court.

14 A I don't fit.

15 Q Don't fall through.

16 A I'm not going to fall through, I'm just --

17 THE COURT: You don't need to stay that close to  
18 the front. Remember, if you stay about a foot from the  
19 microphone, you're good.

20 THE WITNESS: Got it.

21 THE COURT: And you can pull the microphone  
22 closer if it's necessary.

23 THE WITNESS: My name is Bob Schaefer and I'm  
24 Vice President of OEM Relations and Data Services at  
25 Reynolds and Reynolds. I've been with the company for 38

1 years, and I started as a programmer and I worked up from  
2 that.

3 BY MS. GULLEY:

4 Q All right. Thank you, sir. You've provided a  
5 lengthy declaration in this case; is that correct?

6 A Correct.

7 Q Now, there's a binder next to you. Get it handy.  
8 There has been some discussion about what data is  
9 available to users in the DMS. With respect to Reynolds  
10 systems, when a dealership employee logs in with the  
11 username and password, what DMS data is available to that  
12 person on a Reynolds system?

13 A The Reynolds system you have customer information,  
14 you've got OEM proprietary-type information, you've got  
15 Reynolds information, you've got name, address, a social  
16 security number, service data, labor operation codes,  
17 parts data, accounting, financial information as well.

18 Q Is there a demographics information?

19 A Yeah, demographics information, addresses in those  
20 areas, yes.

21 Q You heard Mr. Cottrell -- you've been here the whole  
22 time.

23 A Yes.

24 Q You heard Mr. Cottrell testify that he does not have  
25 access to this when he logs in as a dealer with the

1       username and password and logs into the DMS. Do you  
2 agree with that?

3       A     No, I do not.

4       Q     Because -- can a dealer have access to data to send  
5 to third parties of their choosing without giving away  
6 access to the actual DMS?

7       A     Yes. They can use Dynamic Reporting, which we've  
8 talked a lot about; being able to download and move that  
9 information. They can schedule that up to four times a  
10 day. And then you've got Dynamic Reporting, report  
11 generated. And also a product called AVID, which is  
12 Automated Vehicle Inventory Download.

13           THE COURT: You're going to have to say that  
14 again, maybe just a little bit more slowly because we  
15 have not only me, but the court reporter has to get all  
16 this down.

17           THE WITNESS: Sorry about that. It's AVID.

18       A-V-I-D. Automatic Vehicle Inventory Download.

19       BY MS. GULLEY:

20       Q     What's that?

21       A     It's a setup that we have where a dealer can take  
22 all the inventory off of their system, put it up into a  
23 secure FTP site, and let as many people, as many vendors  
24 come get it. We will host it for them or they can  
25 actually host it themselves.

1 Q And that's on a secure --

2 A It's on a secure environment, secure lane and a  
3 secure FTP site as well.

4 Q Do any dealers elect to send that to Authenticom?

5 A We have a little over a thousand of those dealers  
6 that ships that use that.

7 Q That send it to Authenticom?

8 A I don't know where they send it. We don't keep  
9 track of that. What we do is we put it out there and  
10 then they make the determination of where that can go.

11 Q Would you object to them giving access of that to  
12 Authenticom?

13 A Absolutely not.

14 Q So let's focus on the Dynamic Reporting. We've  
15 heard some about that. If you go in your binder -- I  
16 want to look at sort of what kind of access you can have  
17 if you log into the system and then from there log into  
18 Dynamic Reporting and try to run a report; all right?  
19 The binder has tabs that are the exhibit numbers. If  
20 you'll look at --

21 THE COURT: And these are all defendants'  
22 exhibit numbers, I think. Is that right?

23 MS. GULLEY: You'll see the very last one has a  
24 "P."

25 THE COURT: Okay. Other than that then they're

1 all defendants'.

2 MS. GULLEY: Yes, Your Honor.

3 BY MS. GULLEY:

4 Q If you'll look at Exhibit 61 and 62 both, try to cut  
5 this down a little bit. You've seen both Exhibit 61 and  
6 62 before; correct?

7 A That's correct.

8 Q And 61 is an email. How did it get to you?

9 A It came from one of our -- it came from a dealer  
10 into Reynolds and Reynolds.

11 Q If you'll turn to the second page of Exhibit 61,  
12 you'll see that there's an email from Authenticom to the  
13 dealer and it includes a link. Do you see that?

14 A Yes.

15 Q Were you able to click that link?

16 A Yes.

17 Q And if you turn to Exhibit 62, is that what came up  
18 if you clicked the link?

19 A That's correct.

20 MS. GULLEY: I would move 61 and 62.

21 THE COURT: Any objections?

22 MR. NEMELKA: No.

23 THE COURT: 61 and 62 are in.

24 BY MS. GULLEY:

25 Q If you look at 62, there are a number of screen

1 shots. So it's an Authenticom document you see from the  
2 header, but there are a number of screen shots. What are  
3 those screen shots?

4 A Those screen shots are of Reynolds and Reynolds  
5 software.

6 Q All right. So this is sent around to dealers. And  
7 if you look at what are Bates pages -- do you know what I  
8 mean? The numbers -- tiny numbers at the bottom?

9 A Yes.

10 Q I would like you to look at page 30 and 31, so I  
11 guess the last two pages.

12 A Yes.

13 Q Looking at page 30, do you recognize what screens  
14 these are? It's pretty small.

15 A Yes. It allows you to move through the Dynamic  
16 Reporting process.

17 Q So the text says "Return to the subscreen menu and  
18 select Dynamic Reporting dataset security." What does  
19 that mean?

20 A Then you're going to go over and set up what reports  
21 and things you can get to.

22 Q So it's the security for the Dynamic Reporting?

23 A That's correct.

24 Q And then you turn to the next page. And is this, in  
25 fact, the data security screen?

1 A Yes, it is.

2 Q In the bullet point it says "Once the Dynamic  
3 Reporting dataset security screen loads, check the 'grant  
4 access to all datasets in all run areas' in the dataset  
5 access section." Do you see that?

6 A Yes, I do.

7 Q If someone were to do that, were to do what they  
8 were instructed to do in this document, what would they  
9 have access to?

10 A All the information on this that's available within  
11 this screen and stuff that you can see.

12 Q So for user IDs and passwords on the system, they  
13 would be allowed to see the demographics data, social  
14 security number, driver's license?

15 A They could see the driver's license area. The  
16 social security number would be encrypted with the last  
17 four digits available. However, if the dealer set it up,  
18 which they can set up to have that access to where the  
19 social security would show, they could create reports to  
20 do that which would be in here as well.

21 Q So in terms of -- okay. All right. While we're on  
22 the topic of data, yesterday do you remember a discussion  
23 about Authenticom pulling data for AVRS?

24 A Yes, I do.

25 Q That's -- you agree with the testimony that it's a

1 car titling company?

2 A Yes.

3 Q Have you investigated what types of data Authenticom  
4 is taking for that car titling company?

5 A The main categories, yes. I haven't been able to  
6 look at the individual data elements.

7 Q And are any of those categories of information that  
8 they're taking not related to car titling?

9 A Yes.

10 Q Such as?

11 A Service. Their service information that goes there,  
12 which is not needed for titling application. There's  
13 labor operation codes that are also requested and sent  
14 that is not available and required for titling  
15 information.

16 Q Who did the labor operation codes belong to?

17 A They actually belong to the OEM. I don't know off  
18 the top of my head what the actual franchises are, but  
19 all of them have it that way.

20 Q Do you have contractual license agreements with  
21 those -- for that data?

22 A Yes. I'm also in charge of all those contractual  
23 obligations and relationships with all of the OEMs.

24 Q Let's talk a little bit about the kind of philosophy  
25 and history of Reynolds. We've heard it from plaintiff's

1 perspective. I'd like to kind of walk through it from  
2 Reynolds' perspective. What has Reynolds and Reynolds  
3 put into developing the DMS and its component systems?  
4 A We've started with Reynolds and USC and I put in  
5 billions of dollars for the infrastructure and the DMS  
6 applications. Within that, we use design, development,  
7 building, testing, certifying, as well as resources to  
8 train all of our dealerships around all of our  
9 applications for billions of dollars to do so, and  
10 including all of the security enhancements with the hub.

11 Q All right.

12 THE COURT: I'm going to ask you to -- it looks  
13 like the mic might not be pointed at you. It's close  
14 enough, but it's not aimed very well.

15 THE WITNESS: Everybody is shorter.

16 THE COURT: I guess so, but it's adjustable.

17 THE WITNESS: Is that better?

18 THE COURT: That's a little bit better.

19 MS. GULLEY: We have seen some diagrams of the  
20 Reynolds system. I don't know if they're in evidence or  
21 not. They're No. 45 and No. 46, defendants' exhibits.  
22 If they're not already in evidence, then I would move  
23 that they be admitted.

24 THE COURT: Any objection to 45 and 46?

25 MR. NEMELKA: No objection.

1 THE COURT: They're admitted.

2 BY MS. GULLEY:

3 Q If you'll turn first to Exhibit 45, please.

4 A I have.

5 Q And we've got kind of the dealer-facing side on the  
6 left and the machine-facing side of the DMS on the right.

7 You see that?

8 A Yes, that's correct.

9 Q Okay. So let's start with the left-hand side. Who  
10 can access this side?

11 A Employees of the dealership.

12 Q And how do they get that access?

13 A Within -- on every PC, what we have is our  
14 intellectual property called ERA Access. And what  
15 happens is the individual employee will actually --  
16 there's an icon that goes on the PC. They will click on  
17 that icon and then your menu system will come up, which  
18 is the intellectual property of the rest of the DMS to be  
19 able to put in the username and password.

20 Q So they enter the username and password on the  
21 program on the PC?

22 A That's correct.

23 Q Does every username and password have access to the  
24 same things?

25 A No. What we do -- the system administrator can

1 settle that up on how it's --

2 THE REPORTER: Excuse me.

3 THE WITNESS: System administrator. I'm sorry.

4 THE COURT: Again, just there you go. That's  
5 the problem. Okay.

6 THE WITNESS: That's better, isn't it?

7 BY MS. GULLEY:

8 Q How do you ensure that the usernames and passwords  
9 are used by individual human employees?

10 A What we do is we have and monitor and track actual  
11 key strokes. There's a lot of monitoring and tracking we  
12 do on those user IDs. We look at and see if they just  
13 goes into, as an example, just into report generator,  
14 that's not a normal function of the dealership.  
15 Depending on how much they print at night, how many times  
16 they go in and out of the system, how many times they hit  
17 our reporting application, we monitor and track all of  
18 those things, as well as key strokes, to be able to  
19 validate if it's humans that entered the information  
20 that's actually coming from a machine.

21 Q When you see automated access, not you physically,  
22 but when the processes notice that there is automated  
23 access, what happens?

24 A We shut off that user ID.

25 Q I mean is there like a man behind a curtain hitting

1 the shutoff or what happens?

2 A No. The system actually looks at it and will  
3 determine immediately that there's a risk associated with  
4 the system. We are a very risk adverse company, so we  
5 will shut that off immediately --

6 THE COURT: Hold on a second before you go on  
7 with that. The system will determine that there's a risk  
8 with the system. What you mean is if you think it's a  
9 machine, you shut it off.

10 THE WITNESS: That's correct.

11 THE COURT: Okay. And it's because you think  
12 that there's a risk to that. There's no other  
13 determination about whether there's risk involved. If  
14 it's a machine access, it's done because you think  
15 there's a risk.

16 THE WITNESS: That's correct.

17 THE COURT: Okay. Good.

18 BY MS. GULLEY:

19 Q What are the risks of machines entering the dealer  
20 base inside?

21 A They can come in and just suck every bit of  
22 information out of the DMS in a matter of seconds.

23 Q Let's look at the right-hand side that is built for  
24 machines. So you see -- it's not on here, I apologize.  
25 There was a red circle around the top of the fork at the

1 top, what we've called the door. Did you hear that --

2 A Oh, yes.

3 Q -- explanation? Do you agree with that?

4 A Yes, I do.

5 Q There is -- you see there's a Reynolds Integration  
6 Hub inside that side?

7 A Yes.

8 Q Can you tell us just at a very high level what does  
9 the Reynolds Integration Hub do?

10 A It will be the interface between third-party  
11 companies --

12 Q I'm sorry. I'm going to cut you off for a second.  
13 You may want to reference Exhibit 46 as well. Either  
14 one, whatever works for you.

15 A Picture-wise this one works for me.

16 Q Exhibit 46.

17 A It has a lot more detail. But what the Integration  
18 Hub does is it actually is the conduit and the touch  
19 point between third-party companies, outside entities,  
20 and the DMS. And what it does is it actually secures,  
21 monitors, tracks all of the information moving in between  
22 the dealership and the outside world in a secure manner.  
23 It does all the -- it will keep all of the interfaces in  
24 there for all the business rules and the customized  
25 interfaces that go to each individual third-party

1 company, which we support a little over 50,000 of those.

2 Q You have 50,000 what?

3 A Interface packages, which are customized packages  
4 that we provide to all of the 147 different third-party  
5 companies we have, including the OEMs as well.

6 Q So I take it that each individual organization has  
7 more than one -- or maybe not each one, but some have  
8 more than one interface?

9 A Absolutely.

10 Q We've heard talk about real-time integration. In  
11 connection with what Reynolds does, the process that  
12 occurs in the hub, what is real-time information? I  
13 think it might help to give an example of how that works.

14 A Yeah. First real-time is when actually, and it can  
15 only be done in an environment like this, there's no  
16 other way and there's no data breaker or broker or any  
17 way you can come in and do real-time. You'd have to keep  
18 pinging, pinging, pinging, pinging.

19 Q Let's slow it down because I don't want to get this  
20 all mixed up. So a data integrator, what you call a data  
21 broker, pinging, pinging, pinging, what does that mean?

22 A When they want to try to do real-time, they'll try  
23 to come in and get information from the system. So  
24 they'll try to get it every five minutes; every ten  
25 seconds. You cannot -- that's not real-time.

1 Q What is real-time?

2 A Real-time is when you're in the system and you make  
3 a change in the system and it immediately goes where it  
4 needs to go. So, for example, if you're in the  
5 dealership and you're working an F&I deal and you want to  
6 do a credit check for a consumer sitting right in front  
7 of you, well, you can't do that credit check inside the  
8 dealership so you have to send it out to do a credit  
9 check to the outside world. So what will happen is  
10 you'll put in the appropriate information, it will  
11 immediately send it out and --

12 Q Now, hold on. I'm standing at the dealer --

13 A Yep.

14 Q -- and I want to buy a car and --

15 A I'm going to do a credit check on you.

16 Q Okay. So go.

17 A And you'll give me all of your pertinent  
18 information. It fills all that in, including social  
19 security number in this particular case. We will take  
20 that information, put it into a format, and immediately  
21 send it out. There will be a response that comes back  
22 and it will immediately act on that response to provide  
23 it to the F&I manager, whoever did that request. And  
24 that's real-time.

25 Q Does it populate any other part of the DMS when

1 they've now put in my information?

2 A If there's changes, what we do is we monitor and  
3 check. If there's changes that are made, it will put it  
4 in at the DMS. If that change is in the DMS and there's  
5 a change there, we will then immediately also distribute  
6 it out to all the appropriate third-party companies that  
7 have a relationship with that dealer.

8 Q So if I also have used this dealer for servicing my  
9 car and I've been in there but since then I've gotten  
10 married; I changed my name; you've run this; when I go to  
11 the service department, will they know that I've got  
12 married?

13 A Yes. They won't know you got married, they'll know  
14 you changed your name. But they will know immediately;  
15 that it goes across any of the applications within that  
16 particular dealership's infrastructure.

17 Q If I walk right over there and go pick up my old car  
18 that's getting fixed, they'll already know?

19 A It's immediate, yes.

20 Q Let's talk about writeback or when a third-party  
21 wants to take information and put it into the DMS. Can  
22 you tell me an example of that?

23 A Yeah. Service appointments is an example of that  
24 particular information where someone is going to set up  
25 an appointment on the system, and there's quite a few

1   interfaces that go back and forth when you do that.  
2   Coming into the system, the first thing you want to do  
3   is -- especially today, you don't want to populate the  
4   screen as much. So you put in Bob Schaefer. It will  
5   immediately go down to the DMS and bring out all of the  
6   Bob Schaefers back so you can look at it and say that's  
7   the Bob Schaefer. And it will populate all of the rest  
8   of the information.

9            You'll set up your appointment. Then it'll take it  
10   down and immediately update. It will look and see if  
11   that appointment is available on the system, what times  
12   are available, is there a technician available; all of  
13   the things that you would do when you brought in your car  
14   to do an appointment. And it will move all that  
15   information back and forth.

16   Q        So that written back information, is it also  
17   populated out to OEMs and third parties?

18   A        Yes. So as soon as Bob Schaefer comes in, if I  
19   changed my phone number as an example, it would  
20   immediately populate that information out to everyone  
21   else as well.

22   Q        And that's happening within the hub since that's  
23   where the third-party --

24   A        All of the control and the security is within the  
25   hub. And one of the things too is the business rules

1 that are intellectual property need to be shared with  
2 each individual vendor so they know what the validation  
3 is, what the length is, so that all work properly within  
4 the entire infrastructure across all the different  
5 vendors as well so you keep all of that in sync to match  
6 into the database of record, which is the DMS.

7 Q Can a data syndicator do that?

8 A No.

9 Q Staying with the writeback concept, what is the  
10 difference between a keyed-in-by-human error that is  
11 written back to the DMS and an automated error? And feel  
12 free to use examples.

13 A Yeah. A keyed-in error, it happens one at a time.  
14 You know, if you're actually sitting there as an employee  
15 at the dealership, you're keying in, it hits it. What  
16 happens is in the case of a automated situation is that,  
17 for example, you put it in and you change Bob Schaefer's  
18 name to Bob Smith; okay? And if that came in, what  
19 happened to us was there was a vendor that changed Bob  
20 Schaefer's name and put in Bob Smith 50 times into the  
21 dealership with all that same information. Well, because  
22 it passes all of the rules that we have, I can't tell you  
23 that Bob Smith is wrong. The only thing I can do is  
24 monitor tracking and go wait a minute. I'm seeing all of  
25 these 50 coming in at one time. I've got to go stop.

1 Q Is that happening? Is that process happening?

2 A It's happened to us.

3 Q No. I mean where is that checking, checking,  
4 checking happening?

5 A We're checking into the hub. Everything is checked  
6 at the hub for the performance of it. Because what can  
7 happen is -- I like to use the analogy we're all human.  
8 Humans make mistakes and they write code. What happens  
9 is we've got to put these protections in to make sure  
10 that when it does happen, we can fix it quickly for the  
11 dealer. So what we've put in is what we call journaling.  
12 Within the journaling capability is we need to keep track  
13 of what was there and what's coming in so when something  
14 happens, we can isolate and fix that correctly.

15 What we do is we keep track of -- because every  
16 identifier that comes in, anybody that gives us anything,  
17 we know that it came from that person.

18 Q Have you ever had to use journaling or the processes  
19 in the hub to fix an automated problem?

20 A Actually what happened to us was we didn't have it  
21 in when it happened to us the first time and that's when  
22 we went -- I won't use the exact words, but we went oh,  
23 my God. And what happened to us was it cost us about  
24 \$2.4 million to fix the problem for about 250 dealerships  
25 because we ended having about 6.3 million wrong usernames

1 out in the field within and we stopped it at noon that  
2 day for 250 dealerships.

3 Q So it happened in half a day. It cost 2.4 million.

4 A Correct.

5 Q It's just a data writeback error.

6 A That's correct.

7 Q How much data do you transmit to and from the hub  
8 each day?

9 A Actually we run about 1.4 billion a day, data  
10 elements a day.

11 Q Okay. And so going back to Exhibit 45 just very  
12 briefly; back to the door. Back to the door there. Is  
13 this just an open pipe -- when you say custom interfaces,  
14 what are you really saying?

15 A Each vendor has their own identifier that comes in  
16 and we customize each one of those. One of the things  
17 that we make sure is, and we're very adamant about this,  
18 is every data element that we're going to pass to a  
19 third-party or an OEM, we make sure they're going to use  
20 that information for what they say they're going to sell  
21 to the dealership. Within that, we have identifiers that  
22 come in so we can identify each one of those vendors  
23 specifically on who they are. Then we also take that as  
24 far as to go down to say even inside when you actually  
25 bring it up, if there's a question from the dealer, we

1 can actually look and see where that individual data  
2 element came from so we can isolate problems quickly.

3 Q Both in terms of writing and in writing back?

4 A That's correct.

5 Q So here, I've kind of messed up the picture, but  
6 this is the RCI vendors. You see that?

7 A That's correct.

8 THE COURT: Maybe you need to zoom in because  
9 it's not actually readable at that scale for me.

10 MS. GULLEY: Sorry. It's also, just FYI, in the  
11 binder Exhibit 45. Thank you so much.

12 BY MS. GULLEY:

13 Q So these vendors in this box here, are any of them  
14 syndicators of data? In other words, do any of them send  
15 data on to other people from this process?

16 A No. In the case of the RCI program, it always has  
17 to be a one-to-one relationship. So it's passed from us  
18 to one entity or one -- you make sure all the business  
19 rules and the specific data is monitored and tracked and  
20 we know exactly who that one entity is. It's a  
21 one-to-one relationship.

22 Q So the custom interface is the data elements needed  
23 for what?

24 A That individual third-party company to meet their  
25 functioning requirements.

1 Q In terms of Authenticom, Authenticom contends in sum  
2 and substance that the amount of data it takes from the  
3 system is about five megabytes and has implied that it's  
4 like the size of a picture, an iPhone picture. Do you  
5 agree with this?

6 A Well, first of all, I mean let's just lay out what  
7 five megs is. Kelly Hall and I are kind of -- we like  
8 math, so we took a look at it and said what we have is --  
9 we went back and looked and said five megs is the same as  
10 17.1 copies of War and Peace. So about what we're saying  
11 here is five megs about all the paperwork that we've all  
12 put together for that case, that's about what five meg  
13 is. Okay? And you take a look at that and say if  
14 there's 50 dealerships, we'd have 50 rooms of this with  
15 all this paperwork which make up all that megs would pass  
16 through everything.

17 Q Is that the only tax on the system?

18 A No. The key to this is that when you sit down --  
19 transmission of a photo, okay? that's the least impact on  
20 the system. What happens is you've got to go build all  
21 that information behind the scenes that says I'm going to  
22 run a report. I'm going to pull the appropriate  
23 information. And that's where all the grinding comes in.  
24 To my analogy back on the paperwork, think about all  
25 those printers that we had to make all this paperwork on

1 how hard they marked and how smoked they got. It's the  
2 same thing here, the intensity that it takes to make that  
3 information and pull those out.

4 What happens too is sometimes they even get into  
5 looking at timing, certain dates between certain time  
6 frames, that becomes more complicated on the system to do  
7 it as well.

8 Q On the -- what we were seeing as the left-hand side,  
9 the dealer-facing side of the DMS, have you ever seen  
10 those kind of performance hits to the CPU or other  
11 performance hits from automated access?

12 A Yes. Unfortunately, yes. I've seen where it's  
13 taken so much where, I'll use this term, it's taken 70  
14 percent of the CPU, what you've looked at is that's the  
15 power of the machine. So if you put it on a 100 percent,  
16 these third parties came in and they kept hitting us and  
17 it took up 70 percent of it, which then what happens is  
18 we get a phone call and the system has gone to its knees.

19 Q We heard Mr. Cottrell's testimony that Authenticom  
20 was once the cause of performance problems; that you  
21 spoke on the phone with him. And I believe and the  
22 record will speak for itself, but to save time, the sum  
23 and substance of the testimony was that it was an easy  
24 fix for him. Do you agree with that?

25 A I can't say whether it was an easy fix for him, but

1 it wasn't for us.

2 Q What do you mean by that?

3 A Well, what happens is it takes us, when something  
4 like that happens, it takes us --

5 THE COURT: You have to remind me what happened  
6 on that.

7 THE WITNESS: Basically what happened, it was  
8 kind of -- we found like a loop. What happened was it  
9 kept hitting the system. And so what happened was we  
10 then had to step back and say where is this coming from  
11 and what's happening. Because the first thing that  
12 happens is a dealership calls in to us and says I've got  
13 a problem. Well, if you look at a system, they run about  
14 50 to 60 user IDs coming in. The configuration of the  
15 system is set up a certain way. So we go out and look  
16 immediately saying what's the performance? What's  
17 happening at this given point in time? Then we start  
18 nailing down, looking at the individual user IDs to see  
19 what's the impact and how things are happening. We start  
20 seeing we're getting crunched. So then you do a  
21 determination and you say okay, who is that.

22 Well, what's happened to us is the third-parties or  
23 the dealers that set up the user IDs set the user ID as  
24 -- could be some name in the dealership; it could be Bob  
25 Schaefer; it could be -- well, we can't -- so we look at

1 that. And then we've got to go look and say so where has  
2 this gone and what has it done and how is this happening.  
3 And then we start to isolate. So that goes into our  
4 technical system center. And they go so far and they say  
5 oh, we've got a performance issue. Then it heads over  
6 into our expertise people on performance. Then they take  
7 a look at it and they say oh, wait a minute. The system  
8 is configured properly. Why is this happening?

9 Now, keep in mind we still don't know a third party  
10 is even accessing the system because we weren't told. So  
11 we come in and then we go oh. Then it comes in -- and  
12 eventually it comes into my area. So we've gone through  
13 three different sets of groups of people.

14 Then I go and isolate and I say where is this coming  
15 from. Well, it's hard for us to determine if it's --  
16 what type and who the data broker is. So then I start to  
17 look at things as okay, let me see patterns of who's come  
18 in and where have they come from and how can I isolate it  
19 so I can get ahold of this person and say -- so in other  
20 words knock it off. So we go through, do our evaluation,  
21 do our test, and that's when I called Steve on the phone.

22 Q And this was how many years ago?

23 A Six or seven years, whatever it happens to be. I  
24 remember distinctly because I was at a McDonald's. But I  
25 was sitting outside and Steve and I were talking and it

1 was no, not us, not us, not us. And I said "Steve, I'm  
2 telling you." So we went through it and he calls me back  
3 and he says "I got it. It's fixed."

4 Well, then what happens is all of the things that we  
5 were going through with all that, we've got to call the  
6 customer up and go "Well, that wasn't us." Well, who was  
7 it? That puts us -- then we get into blame and how did  
8 it happen and all of these kind of things that happen  
9 from there.

10 Q Are you aware of any other incidents involving  
11 Authenticom more recently than that?

12 A Yes. What's happened is when we went through the  
13 actual wind-down period, what we see is what we call  
14 piggybacking user IDs. And what happens here is we'll go  
15 out and protect or use one of these user IDs, in this  
16 case CDK to come in. The dealership then gives that same  
17 user ID to Authenticom --

18 Q Is that authorized?

19 A No, it's not authorized. To that -- to Authenticom  
20 and what they're doing is using this user ID for two  
21 different methods, one for CDK and one for Authenticom in  
22 this particular case.

23 Q Are you saying that Authenticom knows that or  
24 doesn't know that?

25 A I don't think he knows it. I don't think that he

1 knows that basically that the dealership gave him and  
2 said this is what I use for CDK. I can't say that. I  
3 don't know for sure. But basically what can happen there  
4 is then we look at it and I call up CDK and go what the  
5 heck are you guys doing. That's not what you're  
6 supposed --

7 Q And you're talking about the DMI.

8 A The DMI. I'm sorry, the DMI people, and say what  
9 are you doing? And they go "That's not us." And we  
10 start to say okay. So then we shut it off. And we have  
11 to recreate a new one for DMI. And then what's happening  
12 is the reason that we knew it was Authenticom is this  
13 third-party vendor would call us on the phone and say you  
14 guys locked me out. I was using Authenticom. I'd like  
15 to enter the RCI program. We'd start our process and  
16 then all of a sudden what would happen is the third-party  
17 company would go silent because now they figured out some  
18 other way to get into the system, and we started the  
19 cat-and-mouse game all over.

20 Q So you're talking about having attempted to work  
21 through the wind-down situation with DMI.

22 A Correct.

23 Q And running into problems with doing so. And so  
24 have you been able to wrap all of that up?

25 A No. We're close, but we're still finishing it up.

1 Q Has that process been easy or a simple switch?

2 A No, it's been hell.

3 Q All right. So turn to -- to kind of make this go  
4 quicker, I want to kind of walk through -- we've seen the  
5 timeline. We've seen sort of the history of blocking  
6 that's been called the status quo. It hasn't come in  
7 Reynolds' case yet. One way to shortcut this though  
8 might be to look at Exhibit 47 in the binder.

9 Now, is this a public document, an internal  
10 document, what is it?

11 A This is a document we take around and use at, like  
12 NADA, and areas to show kind of map of what we've been  
13 doing.

14 Q So you talk to dealers about this or vendors?

15 A Both. Dealers, vendors and OEMs.

16 Q And the discussion -- it's a two-page document. I  
17 think it's double sided. But does this generally lay out  
18 certain of your security milestones?

19 A That's correct.

20 Q Just taking the first one, it says "The GLB,  
21 Gram-Leach-Bliley Act, increases personal information,"  
22 then it talks about kind of the beginnings of this  
23 program in 1999. Was it caused by GLB or why is that  
24 there?

25 A No, it was not caused by GLB. We just -- we started

1 that, just made us go faster and quicker about it because  
2 of the GLB, but we'd already started that process. We've  
3 been working on security way before this.

4 Q So the history of technological measures is laid out  
5 in this document; you agree with that?

6 A Correct.

7 Q Did you take measures besides technological measures  
8 to prevent what you call hostile integrators from  
9 entering the dealer-facing side of the DMS?

10 A No. We've got contracts that hold people  
11 accountable to making sure third-party companies don't  
12 become our dealer contract or third-party contracts.

13 Q Is there -- what about car manufacturers?

14 A Car manufactures actually provide us information  
15 that we have to protect the data that says we can only  
16 use it for certain reasons; that we have to make sure  
17 that we abide by those or that they will pull our  
18 contract.

19 Q Some of the papers in the case talk about a game of  
20 whack-a-mole as these technological measures were being  
21 in effect; contractual measures were in effect. Are you  
22 familiar with that terminology?

23 A Who isn't?

24 Q But in this context what did that mean?

25 A We would just continue to -- I would block

1 something. I would put on a security, then they would go  
2 ahead and fight us. I call it the cat-and-mouse game  
3 where we go back and forth, back and forth. And what  
4 happened over time is that we would make a change and  
5 they would figure it out. Then we'd would be making  
6 another change. So over time what's happened is we  
7 started learning more and more and more and more to where  
8 we could get better at making sure that the system was  
9 secure.

10 Q Let's look at some of the other things you did. If  
11 you'll turn to defendants' Exhibit 71. Do you recognize  
12 this as a lawsuit filed by Reynolds and Reynolds in 2012?

13 A Yes, I do.

14 Q And the defendant was?

15 A SIS.

16 Q And you recall that you sued them for tortious  
17 interference and violations of the Computer Fraud and  
18 Abuse Act and other things?

19 A That's correct.

20 Q And you also -- well, let's look at defendants'  
21 Exhibit 99.

22 MS. GULLEY: I don't think I need to move in  
23 that exhibit because it's a public document, but --

24 THE COURT: You're talking about Exhibit 71?

25 MS. GULLEY: Yes, Exhibit 71.

1 BY MS. GULLEY:

2 Q If you'll turn to Exhibit 99. There's been earlier  
3 testimony here. Do you agree that exhibit -- defendants'  
4 Exhibit 99 is the cease-and-desist letter -- a  
5 cease-and-desist letter that you sent to Authenticom in  
6 April 2015?

7 A Yes, I do.

8 MS. GULLEY: I would move to admit defendants'  
9 Exhibit 99.

10 THE COURT: Any objection?

11 MR. NEMELKA: No.

12 MS. GULLEY: Did you send --

13 THE COURT: It's admitted.

14 MS. GULLEY: Thank you, Your Honor.

15 BY MS. GULLEY:

16 Q Did you send cease-and-desist letters to other  
17 unauthorized automated accessors of the dealer-facing  
18 side of the DMS?

19 A Yes.

20 Q For example?

21 A DMI.

22 THE COURT: I'm sorry, what was that? DMI?

23 THE WITNESS: Yeah.

24 BY MS. GULLEY:

25 Q Anyone else? SelectQu we heard testimony --

1 A SelectQu was another one.

2 Q All right. You sent this in April 2015 saying they  
3 were violating your rights. Do you still think  
4 Authenticom is violating your rights?

5 A Yes.

6 Q Now, you've blocked unauthorized access for a number  
7 of years. I think at this point there's really no  
8 dispute about that. But you have authorized it. So  
9 you've blocked unauthorized use, but you have authorized  
10 automatic processes in certain circumstances in the past;  
11 correct?

12 A That's correct.

13 Q We've heard it called different things. Wind down  
14 is one of the things we've heard about. Has Authenticom  
15 ever been part of your wind-down monitored access program  
16 as you move people to the certified interfaces?

17 A Not exactly. Not directly, no.

18 Q What do you mean not directly?

19 A Well, what we do is we actually form the  
20 relationship with a vendor, and that vendor then,  
21 depending on who they're using, is who we actually end up  
22 allowing to get in. We're actually having that  
23 relationship with the vendor, not with that individual  
24 data broker, as an example. So we're actually white  
25 listing that vendor versus the actual Authenticom or DMI

1 or whoever.

2 Q The service provider to the dealer when you say  
3 vendor?

4 A That's correct.

5 Q So in what circumstances would that come up? Why  
6 would you -- in what circumstances would you find  
7 somebody that's been using Authenticom that you would be  
8 doing this?

9 A Well, there's vendors that would be using  
10 Authenticom to use to get into the DMS to get the system,  
11 so we would actually protect or white list that user ID  
12 so Authenticom could get in to get that data for that  
13 vendor.

14 Q What if you -- what about -- we heard some testimony  
15 earlier about acquisitions of companies. Is that --

16 A Where we've been with that is that the ones we use  
17 with Authenticom today have been acquisitions; that we've  
18 actually gone out and purchased those were the ones. The  
19 other ones that we've white listed, in the case of  
20 Authenticom being the data broker, would be the  
21 third-party vendors we've got in the RCI program or OEMs.  
22 Jaguar or BMW are an example.

23 THE COURT: So the third-party vendors that  
24 you've got in the -- I didn't catch the name of the --

25 THE WITNESS: In the RCI program.

1 THE COURT: RCI program. Okay.

2 THE WITNESS: Yes, Your Honor.

3 BY MS. GULLEY:

4 Q So in those circumstances when you do that, do you  
5 build them? What do I do for those individual -- for the  
6 vendors?

7 A In the case of the vendors, we'll work with them to  
8 have them go through and eventually get to a certified  
9 interface.

10 Q I'm sorry, in terms of the temporary access, do you  
11 just, like, give them a username and password and they go  
12 for it?

13 A No. What we do is we code those now. What we  
14 actually do is we sit down with that individual vendor  
15 and say what's the data elements that you are going to  
16 use and here is a naming convention for that user ID so  
17 that we know what that is. And then we build a template  
18 so that they can only access that particular information.

19 Q And how much cooperation does it require between the  
20 two?

21 A Significant amount. We have to understand what the  
22 data elements are they're pulling and what we have to  
23 make sure they can get to.

24 Q They have to basically tell you all about there --

25 A That's correct.

1 Q What they need the data for.

2 A That's correct.

3 Q In terms of what you have to do, what do you have to  
4 do in those circumstances? What kind of resources do you  
5 have to put towards that?

6 A I've got resources set up. We have to monitor and  
7 track it on a manual basis. So what we do is I get a  
8 report every week of every user ID, where they've gone,  
9 how many times they've gone in, what information they  
10 continue to pull, do they try to go somewhere else. I  
11 can see all that information. Then I have to isolate  
12 that data and look at it and see if there's any risks or  
13 anything or anything that's happened where they've tried  
14 to get things that they shouldn't get or someone else has  
15 come in and tried to get more information. It's not  
16 necessarily that vendor or that broker that would do it,  
17 it could be piggybacking, again my term, on how that  
18 would work.

19 Q Do you have a contract with Authenticom?

20 A A contract, yes, I do.

21 Q Did you enter into it? Did prior --

22 A No. The contracts we inherited with third-party  
23 companies, from the companies that we purchased.

24 Q That contract, was it with DealerVault, the company  
25 DealerVault?

1 A No, it was not.

2 Q Who was it with?

3 A It was with Authenticom.

4 Q Is that difference significant to you?

5 A Yes, it is. Absolutely. When we -- actually what  
6 happened is Authenticom to us, when we first -- in the  
7 relationship we had, I go back to the one-to-one  
8 relationship, where what they would do is provide the  
9 information to our one vendor -- to our one application  
10 when we had that set up that way. And then they tried to  
11 move it to DealerVault.

12 Q And the distinction between Authenticom and  
13 DealerVault, if one is one-to-one, what is DealerVault?

14 A One-to-many.

15 Q Did you ever authorize for any Reynolds-owned or  
16 related services for Authenticom to transfer it from  
17 Reynolds or any other DMS onto anyone else other than the  
18 application provider?

19 A No.

20 Q In other words, would it be okay if under your  
21 contract in your mind they took data out of your DMS or  
22 anyone's DMS, put it into DealerVault, and sent it to  
23 someone other than your applications?

24 A No.

25 Q What did you do when you learned about the change in

1       their corporate structure and how they were planning  
2       to --

3       A       Well, first of all we learned about it. What  
4       happened was --

5               THE COURT: Clarify. When you say *change in the*  
6       *corporate structure*, what are you -- I'm not sure what  
7       we're talking about here.

8               MS. GULLEY: So -- thank you, Your Honor. I'll  
9       clarify that.

10      BY MS. GULLEY:

11     Q       Your contract was with Authenticom. We've heard  
12    testimony that DealerVault at some point -- for some  
13    period of time they both ran concurrently and then at  
14    some point there was only DealerVault. That's not your  
15    area. You're not in the details of it. But at some  
16    point were you alerted to that change?

17     A       Yes.

18     Q       And what was your reaction to that?

19     A       We sent a message, a notification to Authenticom  
20    that they breached the contract because they were using  
21    DealerVault, which was not in the contract, and we wanted  
22    the one-to-one relationship.

23     Q       Now, are you -- since that change has occurred, are  
24    you adding more vendors --

25     A       No.

1 Q -- and things like that --

2 A We're trying to get away as quick as possible.

3 Q Now, there's been a number -- some testimony about  
4 Penske. Penske is Reynolds' largest customer; right?

5 A Correct.

6 Q Did you give Penske special permission to use  
7 Authenticom?

8 A No. About 18 months ago I received a call from  
9 Chuck Williams, who's the CTO of Penske Automotive, and  
10 he asked me if they could go ahead and use Authenticom  
11 and I said "Absolutely not."

12 Q When did you find out that Penske was using  
13 Authenticom?

14 A On -- pretty much on the day that we received -- you  
15 received notification -- I received notification from you  
16 about the lawsuit.

17 Q Is that how you found out?

18 A Pretty much.

19 Q Were you already looking into --

20 A Yeah. Mr. Brockman asked me to -- and the reason  
21 for this is our objective was, last August, to get  
22 everyone off of the protected user IDs by March. So Bob  
23 sent me a note and said I want to know who we have still  
24 and I want to see Penske and who they're accessing. I  
25 received the information from my guys. Bob asked me on

1 3-26. It took me about to 4-26 -- 4-25 until I got the  
2 information from one of my guys, and that's how I look at  
3 it the same day.

4 Q I've got a lot of topics and not very much time.

5 A Sorry.

6 Q No, it's okay. I'm just letting you know the  
7 constraints of today.

8 A Got it.

9 Q Okay. So you didn't authorize them. How are they  
10 getting into Penske if you didn't authorize it?

11 A Penske is giving them a user ID to get in to do  
12 that.

13 Q So Exhibit 159 is the email -- that's the  
14 plaintiffs' Exhibit 159 at the end of the binder is the  
15 email that was used in plaintiff's case to indicate that  
16 -- you heard that testimony --

17 A Yes.

18 Q -- that you had given permission?

19 A Yes.

20 Q To the extent that Penske said Reynolds has  
21 confirmed protection of the user profiles, is that  
22 statement true or false?

23 A We confirmed the protection of Parts I, a user ID.

24 Q Oh, I see. And so was that for Authenticom?

25 A Not to my knowledge.

1 Q Who did you think --

2 A Parts I is a company that we actually have that  
3 works under Subaru, that works with Subaru that we have  
4 protect user IDs with.

5 Q You have -- you're working to move Subaru to --

6 A In this case it happens to be an OEM interface, a  
7 certified OEM interface that's secure. We're moving that  
8 now.

9 Q Is that complete? Almost --

10 A We're about 30 days away from national release.

11 Q So let's talk about what Authenticom can do in terms  
12 of Reynolds' authorization. There's been talk of data  
13 cleansing services and agents under the contracts where  
14 vendors can send data for cleaning services. Do you have  
15 any objection to that?

16 A Absolutely not.

17 Q Is that just specific to Authenticom or --

18 A That's specific to anyone.

19 Q I heard some testimony earlier today that there are  
20 numerous data-cleansing services.

21 A There's quite a few data-cleansing services,  
22 normalization services that are out in the market today.

23 Q It's already been discussed, there's a declaration,  
24 it's defendants' Exhibit 162 from the John Eagle  
25 dealership. Do you know Lesha Wood?

1 A        Absolutely.

2 Q        She talks about using Dynamic Reporting and pushing  
3 it to Authenticom. Do you object of that?

4 A        No.

5 Q        Are you aware of how many dealers do that?

6 A        I have no idea how many do that.

7 Q        Are you trying to put Authenticom out of business?

8 A        Absolutely not. In fact, we still have a contract  
9 with Authenticom for data-cleansing services. We were  
10 planning on continuing that.

11 Q        There was discussion of this agent concept in terms  
12 of vendors using someone to cleanse their data. Can SIS  
13 do that?

14 A        They can standardize and normalize it. I guess  
15 that's what you mean by -- yes, SIS, DMI and Authenticom  
16 could do the same thing.

17 Q        Why isn't this a danger to the DMS?

18 A        Because we actually take the information and push it  
19 to them on behalf of the vendor. Our relationship is  
20 between us and the third-party vendor. We're the OEM,  
21 because they also do it with OEMs, and we push that  
22 information to them and then they standardize it on  
23 behalf of that entity.

24 Q        Okay. I don't have long and I need to get through  
25 pricing and the agreement and other things, so let's work

1 towards that. So we heard a few people testify about  
2 XTime. XTime is an RCI vendor; correct?

3 A Correct.

4 Q They have a certifier.

5 A Correct.

6 Q A couple of people testified about XTime's pricing,  
7 about their integration pricing. Do you remember that?

8 A Yes.

9 Q Have you seen XTime's invoices?

10 A Yes, I have.

11 Q And you heard somebody say they knew that it was  
12 high because it said Reynolds.

13 A It said Reynolds, CDK, and DealerTrack zero.

14 Q Right. And for Reynolds and CDK, it's some hundreds  
15 of dollars.

16 A Some number, yes.

17 Q We won't say. But it's something more than zero.

18 A It's a number.

19 Q XTime is owned by who?

20 A DealerTrack. It's owned by Cox.

21 Q And Cox owns a competing --

22 A DealerTrack. A DMS, DealerTrack.

23 Q So you heard someone say today that some DMS  
24 providers have no integration fees and some have others.  
25 Have you heard that also that you have dealers leaving

1 because they see invoices like this that say DealerTrack  
2 zero?

3 A Um-hmm. Yes.

4 Q Have you, Reynolds, dramatically increased RCI  
5 pricing since 2015 as alleged by Authenticom?

6 A We have not.

7 Q Are there any outliers --

8 A There's outliers. What we do is we have similar  
9 pricing for similar interfaces. What we want to do is  
10 keep everyone on that are in a market. So CRM or body  
11 shop, keep that pricing consistent across those. So we  
12 have -- if you have similar interfaces, we want similar  
13 prices for those. So we'll move up those ones, those  
14 vendors that have been in the program for a long time so  
15 it's a consistent across-the-board pricing.

16 Q But since 2015, what has your sort of standard  
17 deviation -- what's your normal percentage increase been  
18 since 2015?

19 A Right around 5 percent. In 2017 increased to 4.

20 Q 4 in 2017.

21 A Yes.

22 THE COURT: Since 2015 your annual increase has  
23 been about 5 percent.

24 THE WITNESS: Yes, sir. Actually I believe it  
25 was 2014 too. We have been consistent on that for the

1 last several years.

2 BY MS. GULLEY:

3 Q Why is your pricing secret?

4 A It's -- that one is going to take me a little bit of  
5 time by the way. It's very --

6 THE COURT: Be succinct.

7 THE WITNESS: Sorry. Didn't mean to set you up.

8 THE COURT: Don't try to talk real fast because  
9 that just makes it hard for the reporter.

10 THE WITNESS: It's very complicated. If you've  
11 got 50,000 packages, what we do is I have to sit down and  
12 look at each individual vendor. Do they have real-time?  
13 Do they have writeback? Do they have batch? How many  
14 data elements? What kind of data elements are they?  
15 What's the -- you know, basically the frequency of that.  
16 Is it going to be -- do they want it multiple times  
17 during the day? Do they want to write it back? So we  
18 sit down and talk to the vendor about everything.

19 Within that, the vendor then makes the decision  
20 whether they can, on the packages, of how many interfaces  
21 they want to put into an individual package. So, for  
22 example, when we talked earlier about the Auto Base and  
23 the Dominions, they have, like, 14 different interfaces  
24 when you get all said and done with that. It's not just  
25 one. And there's real-time in there that says as an

1 example, we have triggers that there's -- I'll give you  
2 customer information. There's 139 specific fields in  
3 customer data. We have to put a trigger in there that  
4 any time that that changes through any time within that  
5 dealership, it immediately gets sent. So we have that  
6 set up, then we have all of the security and stuff that  
7 surrounds all of that.

8 So we sit down with each one of those and say you  
9 might need 20 of those, 25 of those or 30 of those by  
10 individual interface. Then what we do is we package  
11 those up and we'll have individual packages.

12 So for me to go out and try to explain to a dealer  
13 -- and I have to individually get with each dealer, with  
14 each vendor, depending on which package they put in, to  
15 sit down and explain the individual pricing for that.  
16 Because when you look at it, someone says something is  
17 worth \$800 or \$300, it doesn't matter. But what are you  
18 getting for that price is what counts and what's the  
19 value you get with that information, Mr. Dealer, that  
20 says here's why this works this way with that.

21 What we've seen is when people moved from a data  
22 broker into our world, going from a batch, which is once  
23 a day, to all of a sudden real-time is going to be more  
24 expensive. But it's the complexity of having to explain  
25 that to each individual dealership based on which package

1 they bought, which vendor, is just an astronomical time  
2 that we can't do.

3 THE COURT: All right. So just to quickly  
4 paraphrase it, so you basically custom negotiate with  
5 each of your vendors what their package price is going to  
6 be.

7 THE WITNESS: Yes. And data elements. Yes, all  
8 the functionalities they use, yes, sir.

9 THE COURT: So I don't want to stretch this too  
10 far. So you've 147 vendors and they have something like  
11 50,000 individual interfaces. You don't custom negotiate  
12 each interface, but that's part of what you're looking at  
13 when you negotiate the package price for the vendor.

14 THE WITNESS: Yes. And what you run is pretty  
15 much on average about three-and-a-half to four packages  
16 per vendor. And then on top of that, they will also have  
17 what we call *ala carte*, to where you have a service and  
18 this guy might want parts for some reason because that's  
19 what the dealer really wants. So he can add in an  
20 *ala carte* one, which would be a single interface, for  
21 special ordering parts for those kind of things,  
22 depending what they want.

23 THE COURT: So when you do this, is there -- I  
24 mean bottom line, is some sort of really complicated  
25 price list that you have a price for each one of those

1 very many elements? Or you put it together and you  
2 negotiate it?

3 THE WITNESS: I put it together and I negotiate  
4 it.

5 THE COURT: Okay. All right. And you want to  
6 keep that secret why?

7 THE WITNESS: Because then what happens is they  
8 get into a comparison. Well, I'm paying \$700 and I'm  
9 paying \$600. Yeah, but you're getting five more fields  
10 more and you've getting real-time. And you're getting --  
11 it gets into be way too -- I don't have time to do all  
12 that and put it together and negotiate. Because, you  
13 know, car dealers and vendors, their strength is  
14 negotiations, and so they want to take all of the  
15 information they can get and come hit me. And so I can't  
16 get into those types of negotiations if I'm comparing  
17 something. We're not necessarily always comparing apples  
18 to apples. They get into apples to oranges and want that  
19 price and we just negotiate based on --

20 THE COURT: So part of it is just it improves  
21 the strength of your negotiating position if you keep it  
22 secret.

23 THE WITNESS: Sure, it does. Sure, it does.  
24 BY MS. GULLEY:

25 Q Are you allowed to tell one vendor what another

1 vendor's data elements are?

2 A Absolutely not. In fact, even I can't --  
3 internally our organization is set up completely  
4 separate. The actual infrastructure and all the data  
5 elements no one else can see.

6 Q Okay. Looking at competition for a moment. Exhibit  
7 -- defendants' Exhibit 161 is the declaration of Ron  
8 Lamb. We've heard he's the former president and most  
9 immediate past president of the Reynolds and Reynolds  
10 Company. You agree with that --

11 A Yes.

12 Q -- general comment?

13 A Yes.

14 Q And did you talk to Mr. Lamb about his  
15 declaration --

16 A Yes, I did.

17 Q -- here? He mentions on the last page that  
18 "Competition in the DMS market has heightened to a fever  
19 pitch" at the very end of paragraph 30. Do you see that?

20 A Yes.

21 Q Do you agree with that?

22 A Yes, I do.

23 Q Are you still losing customers?

24 A Yes.

25 Q Is this a surprise to you?

1 A No, it is not.

2 Q Why is that not a surprise to you?

3 A Well, when I started about ten years ago now, I  
4 started the security enhancements, and there's quite a  
5 few internal resources coming at me. What are you doing?  
6 You're taking away sales force support organization. So  
7 I got with Mr. Brockman and I said "Bob, you've got to  
8 explain to them the business that we're in." Bob got  
9 into -- brought in the room and stuff, brought all the  
10 executives in the room and said "Let me set it straight.  
11 We are going to make these security enhancements. We are  
12 going to lose dealers. We know that. We understand  
13 that. A dealer will be with us if they want to be secure  
14 and they can go somewhere else, if not."

15 Then another time we had actually NADA came in,  
16 their lawyers came in as well as Finbarr O'Neill, who was  
17 a consultant at the time. They asked for --

18 Q The NADA came in?

19 A The NADA committee came in and said you're making  
20 security enhancements. You're losing customers.

21 Mr. Brockman looks across the table and said "I  
22 understand that. I am so strong I am going to be sitting  
23 on the right side of the dealerships that want to sit on  
24 the right side for security and I know we're going to  
25 lose dealerships."

1 Q And were you ever threatened to lose the entire  
2 franchise base of any of the OEMs?

3 A Yes. We met with Subaru and had a conversation with  
4 them and they went through and said you realize that all  
5 of the other DMS providers are working directly with SIS  
6 and will allow SIS into the system to do things. And  
7 Mr. Brockman looked back and says "We will not do that."  
8 What happens is they're publicly held companies. Those  
9 publicly held companies, their responsible is to the  
10 shareholders to make more money. My responsibility is my  
11 reputation. My reputation is to make sure these systems  
12 are secure. And if -- and he says "You're going to lose  
13 the Subaru business," and he said "So be it."

14 Q All right. The February 2015 agreement. It's  
15 Exhibit 1 in your binder if you need it. My questions  
16 will be general to begin with. Did you enter the  
17 February 2015 agreement with CDK to stop losing customers  
18 to them?

19 A Absolutely not. I don't -- no, I did not.

20 Q Are you losing fewer customers now that you have  
21 this agreement?

22 A No, not -- no.

23 Q Where are the customers going?

24 A DealerTrack.

25 Q Did you enter the 2015 agreement with CDK to make

1 them close down their system?

2 A      Absolutely not. I don't care what CDK does to be  
3 honest with you.

4 Q      Did you enter the February 2015 agreement with CDK  
5 to block Authenticom from the market?

6 A      Absolutely not.

7 Q      Did you enter -- did you agree with CDK that CDK  
8 will no longer access your system using hostile  
9 integration?

10 A     Did I -- I'm sorry, say that again.

11 Q     Did you agree with CDK that CDK would no longer  
12 access your system with -- was it a blanket --

13 A     No.

14 Q     -- ban you --

15 A     No.

16 Q     -- could no longer come --

17 A     No, I did not.

18 Q     All right. Well, why did you enter into the  
19 February 2015 agreement?

20 A     Well, first of all what we knew is we had the  
21 security enhancements in place. What we wanted to do is  
22 minimize the impact to the customer base which would be  
23 the wind down; took a look at the customers and said  
24 minimize the impact for them to all of a sudden be shut  
25 off. How do we come up with that.

1           The other thing that we looked at is just the  
2 overall market presence of the security enhancements. We  
3 were done with it. I mean basically we had them locked  
4 out, so we weren't worried about that anymore.

5 Q        Why did you offer them the business resolution?

6 A        Couple things that -- what we wanted was is that  
7 some of it is a business resolution. We went in and  
8 wanted to negotiate to get into the 3PA Program from a  
9 DMS --

10 Q       Were any other DMS providers' applications in the  
11 3PA Program at that time?

12 A       No, they were not.

13 Q       And you had no access to that application?

14 A       No. That was one of their stipulations. They would  
15 not let a DMS provider in and we wanted in.

16 Q       And who else did you want to benefit by entering  
17 into what you've called the soft-landing agreement? Who  
18 was the soft landing for?

19 A       It was for the vendors. It was for the dealers.

20 Q       For the vendors and the dealers. Okay. Did you  
21 tell Mr. Cottrell that you and CDK had agreed to support  
22 each other's 3PA and RCI programs and therefore block  
23 competition like Authenticom?

24 A       No.

25 Q       Have you ever talked to Mr. McCray about this

1 contract?

2 A No.

3 Q Looking at Exhibit 1 on page four, Authenticom has  
4 highlighted Section 4.5. Why is this in the agreement?

5 A What we wanted to do -- when you get into a  
6 wind-down process, you have to share a lot of information  
7 together that says how do you guys work and how do we  
8 block information. And the reason that we wanted to get  
9 this in there is because what we were going to share with  
10 them is some of the information of how we were blocking  
11 and they needed to share with us how they were getting in  
12 so what we do, to the best of our ability, make sure that  
13 we go ahead and protect those user IDs.

14 Q Mr. Cottrell testified that vendors aren't allowed  
15 in the program because they offer competing products to  
16 Reynolds' layered applications. Is that true?

17 A No.

18 Q How many applications are in the program that  
19 compete with your applications?

20 A 50, 60, 70. It's a big number.

21 Q One of the experts has -- actually no, I'm going to  
22 skip that. So applications. The application market. We  
23 were just talking about it. Since February 2015, have  
24 you seen more or fewer applications in the market?

25 A More applications.

1 Q And are they the same? You know, other kinds of  
2 applications you were seeing a decade ago? Or are they  
3 different in some way?

4 A Yes. I hate to say it that way, but you're seeing  
5 new ones come in that are interested in the CRM. You've  
6 seeing CRMs getting broken apart. You're seeing new  
7 entrants come into the environment as well.

8 Q Mr. Schaefer, we heard from two vendors today.  
9 Have -- about their views of the RCI program. Have you  
10 heard contrary views from vendors?

11 A Absolutely.

12 Q Now, if you will, I gave you a preview of this so I  
13 know you've seen it already.

14 A Yes.

15 Q Exhibits 50 through 60.

16 A Yes.

17 Q What are Exhibits 50 through 60?

18 A Those are what they call in the market testimonials  
19 or areas that sit down and support the program, and  
20 support of the program from vendors.

21 Q And have you heard from vendors -- are these the  
22 only -- have you only heard positive from vendors ten  
23 times about the RCI program?

24 A No, because there's, you know, some vendors --

25 MR. HO: Your Honor, we just object to the

1 extent that this is being offered for the truth. It's  
2 hearsay.

3 THE COURT: I understand.

4 MS. GULLEY: Right. It's just being offered for  
5 state of mind and what you've heard from the market.

6 THE WITNESS: Yes.

7 BY MS. GULLEY:

8 Q Are these on your -- are some of these from your  
9 website?

10 A Yeah, there are some on website and I have more  
11 conversations with third-party companies, along the  
12 successes supporting the program.

13 Q But some vendors don't like it. Do they cancel  
14 their contract sometimes?

15 A They can, yes.

16 Q Do -- do dealers like it when you lose important  
17 contracts with application providers?

18 A No, not at all.

19 Q Do you have dealers that threaten or do leave  
20 because you don't have contracts with certain application  
21 providers?

22 A Yes, we have had that. Yes.

23 Q POWER doesn't have as many application providers as  
24 ERA. Do people leave POWER for that reason?

25 A Yes, they do. In fact, they're starting more and

1 more to do that, to take that into consideration, yes.

2 Q All right. So let's talk just briefly on the issue  
3 of stop blocking and what that might mean to you; okay?  
4 We talked about wind-down access and what that costs. I  
5 won't rephrase that. But in terms of why it's a problem  
6 for you to target one particular syndicator of data, can  
7 you do that? Can you make sure that it's only one that  
8 gets in?

9 A In the case of the username and the password I  
10 can't. They're coming in through our intellectual  
11 property, through the ERA Access, and with that they look  
12 like an employee to us so I don't know how to know that  
13 it is an individual data broker.

14 Q Do you make changes to your system?

15 A Yes.

16 Q Why?

17 A Every day.

18 Q General big picture categories of the kinds of  
19 changes that are being made to the OEMs every day.

20 A Changes to OEMs, changes for legality issues,  
21 changes to enhance and modify the product and make better  
22 security enhancements, state, federal enhancements. We  
23 make changes and modifications all day long.

24 Q I'm talking like programming changes.

25 A Those are programming changes.

1 Q What happens if you're trying to "protect the user  
2 ID" and you make -- have to make a change to the system?

3 A We can make a change in several areas that comes in  
4 that either deletes a field, adds a field, or modifies a  
5 field. For example, taking the total out and breaking it  
6 out, that would affect that side, but also could break  
7 and actually look like it's blocking the system.

8 Q It looks like it's a block when you make those  
9 changes. So --

10 THE COURT: I'm not sure I understand that.

11 THE WITNESS: In other words, let's say that we  
12 made a change in a particular application that we changed  
13 it from. Let's say when they logged in and the character  
14 they always use to log in was an A, as an example. So  
15 they logged in, they logged in and we decided what we  
16 need to do is make it a B and a D for some reason because  
17 of functionality changes. We change it to a B and D, and  
18 then that third-party couldn't get in anymore because  
19 they had been using A in their machine piece and it looks  
20 like we blocked them. We didn't, we just made a  
21 programming change that says we went and modified our  
22 program to now use B and D instead of just A.

23 Q But that doesn't happen from the hub; right? Why?

24 A The actual -- those types of user interfaces or the  
25 user look is actually done at the DMS level. We make

1 those changes just down at the DMS.

2 Q So it doesn't happen if it's in the environment. So  
3 why not just build Authenticom a custom interface?

4 A Because what we do is not a one-to-one relationship  
5 then with DealerVault.

6 Q So if you wanted a one-to-one relationship -- we  
7 heard testimony that Authenticom has roughly 400 vendors.  
8 We've heard testimony that you have more than 5,000  
9 dealers. What would it take for you to customize an  
10 interface for 400 vendors across 5,000 dealers?

11 A Years.

12 Q What happens if there is a security incident?  
13 What's your first response to data security?

14 A When there's a security incident I shut it off.

15 Q You shut it off. So if you -- if a security  
16 incident occurred for whatever reason on whatever part of  
17 the system --

18 A When in doubt I shut it off.

19 Q And would that cause someone to be blocked?

20 A Yes.

21 Q Everyone, I guess.

22 A Everyone would be blocked. And I catch hell when it  
23 happens.

24 Q Okay. If Authenticom -- we heard about  
25 piggybacking. But if Authenticom gets credentials to

1 allow access to the DMS and somehow that code get out to  
2 the consumers data, whether through an email or any which  
3 way, what concerns do you have about that?

4 A Basically someone can come in and just use that user  
5 ID to get information, get into the system, start hacking  
6 around, looking around and getting information that we  
7 wouldn't be able to stop or know because the hub protects  
8 me from everything else. I'm not in the hub to do that.  
9 I don't have that security checks down in that  
10 environment.

11 Q Have you had to respond to investigations when  
12 dealers or other third parties have had security  
13 incidents?

14 A Oh, yes.

15 Q As far as you're aware has your system ever been  
16 breached?

17 A No, it has not.

18 Q Were those -- were those expensive? Can you -- sort  
19 of order of magnitude of the cost of investigating it for  
20 third parties?

21 A Oh, yeah. I've gotten involved with the IRS. I've  
22 gotten involved with fire --

23 Q But I mean data breach incidents.

24 A Oh, you mean if there was a data breach with us, a  
25 cause for a data breach?

1 Q For example, your investigation, there's evidence in  
2 the record of the eLead situation. Even though that was  
3 outside of your system, how much did that cost you?

4 A It cost us somewhere around 750 to a million  
5 dollars.

6 Q And how many days did it take to spin that?

7 A We fixed it in six days.

8 Q If Authenticom were to be granted access for a year  
9 or two years or something like that -- I see your face --  
10 would -- do you think a \$10 million bond would cover the  
11 potential risk to you?

12 A Absolutely not.

13 Q Okay.

14 MS. GULLEY: I will pass the witness. Thank  
15 you. (3:00 p.m.)

16 THE COURT: Very good. Cross-examination.

17 THE WITNESS: Can I just stand up? My legs are  
18 killing me.

19 MR. NEMELKA: Absolutely. No problem.

20 MS. GULLEY: Bob is 6'7".

21 THE WITNESS: Too many years of basketball.  
22 Sorry about that.

23 MR. NEMELKA: No problem. In fact, feel free to  
24 sit back so you're not so crouched under the table.

25 THE WITNESS: Thanks. Sorry about that.

1 THE COURT: Just stay close to the mic.

2 THE WITNESS: I will. I'll grab it.

3 CROSS-EXAMINATION

4 BY MR. NEMELKA:

5 Q Good afternoon, Mr. Schaefer. My name is Mike  
6 Nemelka. I'll be examining you this afternoon. You  
7 testified that you did not have a data integration  
8 contract with Authenticom; right?

9 A No, I said I did.

10 Q All right. Well, I thought you said that it was  
11 your -- the vendors that you purchased that have the  
12 contract with Authenticom, not Reynolds.

13 A No, those -- no. When we -- we actually assign  
14 those when we have those contracts. Those are Reynolds  
15 and Reynolds contracts with Authenticom.

16 Q So Reynolds itself actually has a data integration  
17 contract with Authenticom; right?

18 A Only from the -- we did not -- let me be clear here.  
19 What we did is when we bought a company, that came with  
20 the company, so therefore we inherited that contract.

21 Q But Reynolds itself does not have a --

22 A Yes, we have one. Yeah, we have them because of  
23 that.

24 Q Okay. Well, let's --

25 MR. NEMELKA: Your Honor, may I distribute some

ROBERT SCHAEFER - CROSS

1 binders?

2 THE COURT: Yes.

3 BY MR. NEMELKA:

4 Q If you could turn to tab plaintiff's Exhibit 164,  
5 please.

6 THE COURT: Are these in order?

7 THE WITNESS: I don't have a 164.

8 BY MR. NEMELKA:

9 Q I'm sorry, 162. I apologize. Do you see that  
10 exhibit in front of you, Mr. Schaefer?

11 A Um-hmm.

12 Q You see that's a contract between Authenticom and  
13 Reynolds?

14 A Yep.

15 Q Dated February 23, 2016?

16 A Yep.

17 Q For data integration services; correct?

18 A That's correct.

19 Q And if you please look at sub point one, *Description*  
20 *of Services*. You flipped. Still on the first page.

21 A Yes.

22 Q You see it says "Reynolds has engaged Authenticom to  
23 extract sales, service and inventory files from their  
24 customers' data management systems for the purpose of  
25 creating an electronic file which can be used to

1 share/communicate the records with a service provider or  
2 other entity." Do you see that?

3 A Yes.

4 Q And do you see on the bottom there's the following  
5 data elements that Authenticom would provide to you that  
6 they pulled from your dealers?

7 A Yes.

8 Q And if you go to the last page, please, do you see  
9 that this contract was signed by you?

10 A Yes.

11 Q On February 25, 2016?

12 A Yes.

13 Q Mr. Schaefer, if Authenticom was such a risk to data  
14 security or your system integrity, you wouldn't use them;  
15 right?

16 A Well, first of all we had these -- what we did is  
17 these were for companies that we bought that we did not  
18 want to shut off, so we continued that while we go ahead  
19 and finish the migration to move away.

20 Q My question was different. If Authenticom was such  
21 a risk to data security or your system integrity, you  
22 wouldn't use them; right?

23 A I don't have any choice because when I bought them,  
24 I had to continue to work with this to do it.

25 Q All right. Please turn to Exhibit 1. Defendants'

1 Exhibit --

2 MR. NEMELKA: We'd like to enter this into the  
3 record, please.

4 THE COURT: Any objection?

5 MS. GULLEY: No.

6 THE COURT: It's admitted.

7 BY MR. NEMELKA:

8 Q Mr. Schaefer, this is the wind-down agreement  
9 between Reynolds and CDK; correct?

10 A Yes.

11 Q We don't need to cover too many of the details here,  
12 but I'd like to go over a few items. Please turn to  
13 Section 1.4.

14 A Yes.

15 Q Do you see that's the wind-down period?

16 A Yes.

17 Q And here it says that "For each DMI third-party  
18 client, the period beginning on the effective date of  
19 this agreement and concluding on the later of," and it  
20 lists some dates here. But what I'd like to focus on is  
21 on the next page. "That the wind-down period for any DMI  
22 client cannot exceed five years from the effective date."

23 Do you see that?

24 A Yes.

25 Q This is entered in 2015; right?

1 A Yes.

2 Q So that's clear until 2020 that you were going to  
3 allow CDK to use usernames and passwords to pull data  
4 from Reynolds dealers; right?

5 A No. Once we got done with each of the vendors,  
6 which we were trying to get that done as quickly as  
7 possible, then we were done.

8 Q Are you done with every single vendor?

9 A We're very close.

10 Q But you're not done currently, are you?

11 A We're very close.

12 Q You still allow CDK to use usernames and passwords  
13 to pull data from Reynolds dealers, don't you?

14 A We're very close to being done.

15 Q So Reynolds is perfectly capable of white listing  
16 all of the usernames and passwords that CDK once used, at  
17 least for a period of time; right?

18 A We put a preliminary place in place, yes.

19 Q You did that --

20 THE COURT: I'm sorry, I didn't hear your  
21 answer.

22 THE WITNESS: Yes, I did.

23 BY MR. NEMELKA:

24 Q Yes, Reynolds was able to; correct?

25 A Yeah. I looked away when I said yes. I apologize.

1 Q And you did that for all of CDK's usernames and  
2 passwords that they were using for vendors; correct?

3 A I did not do it for CDK. What I did it for was the  
4 vendors we had relationships for under the RCI program.

5 Q That wasn't my question. You did it for the  
6 usernames and passwords that CDK was using to pull data  
7 from Reynolds dealers; right?

8 A I did it for the vendors and they happen to be using  
9 CDK.

10 Q I don't want to argue, Mr. Schaefer. It's just a  
11 simple fact. You protected the usernames and passwords  
12 that CDK was using to pull data from Reynolds dealers;  
13 isn't that right?

14 A I protected the user IDs that the vendors were using  
15 that -- who they used, I protected those on behalf of the  
16 vendor.

17 Q I think we get the point. All right. If you could  
18 please turn to Section 4.4. Mr. Schaefer, I understand  
19 it's one thing not to have CDK no longer access  
20 Reynolds's DMS. But wouldn't you agree with me it's an  
21 entire nother thing to have CDK actually cooperate with  
22 Reynolds to transfer their own vendor clients to  
23 Reynolds?

24 A They didn't transfer them.

25 Q They were required to cooperate with you in

1 transferring their own vendor clients to Reynolds,  
2 weren't they?

3 A They were required -- they provided information. I  
4 did all the negotiations with the vendors. They had  
5 nothing to do with those. Once the vendor -- I talked  
6 with the vendor, I took over all responsibility of  
7 negotiation and CDK had nothing to do with it.

8 Q Under this contract, Mr. Schaefer, CDK was required  
9 to cooperate with you in transferring CDK vendor clients  
10 to Reynolds; correct?

11 A The cooperation I had from them was a letter. The  
12 rest of it I did negotiation myself.

13 Q All right. Let's look at that agreement then.  
14 Section 4.4, if you look at the last -- it's about midway  
15 down, it says "During the wind-down period for each DMI  
16 third-party client..." Do you see that? It's one, two,  
17 three, six lines down.

18 A I got it.

19 Q "So during the wind-down period for each DMI  
20 third-party client, CDK agrees to reasonably assist and  
21 cooperate with Reynolds with respect to..." and if you go  
22 down to No. 3, "the transition of such customers to the  
23 Reynolds RCI program with respect to Reynolds dealers."  
24 Do you see that?

25 A Um-hmm.

1 Q Don't you agree it's maybe one thing to agree for  
2 CDK to access a system, but it's entirely another thing  
3 to -- for two competitors to cooperate to transfer  
4 customers from one to another?

5 A It didn't say anything about transferring customers.  
6 I made it so what we could do is understand what the data  
7 elements are because they were passing the data.

8 Q Transition. That's correct. So instead of  
9 transfer, the contract says transition.

10 A Transition. So that's part of the transition.

11 Q Okay. So Ms. Gulley asked you this question, I  
12 wrote it down because I was very interested in your  
13 answer. She said: "Did you agree with CDK that CDK will  
14 no longer access your system using hostile integration?"  
15 And you said "No," didn't you?

16 A Yes.

17 Q Let's look at Section 4.5.

18 A Um-hmm.

19 Q It says "Each of Reynolds and CDK further covenants  
20 and agrees..." do you see that how it starts out? "Each  
21 of Reynolds and CDK further covenants and agrees..." Do  
22 you see that?

23 A Yes.

24 Q "... not to..." and let's go after the disjunctive  
25 or, "... not to..." on the last line "...take any other

1 steps to assist any person that it reasonably believes to  
2 have plans to access or integrate with the other party's  
3 DMS without the other party's written consent." Do you  
4 see that?

5 A Yeah.

6 MS. GULLEY: I'm just going to object on the  
7 optional completeness of this paragraph. You get it.

8 THE COURT: You can flesh it out if we need to,  
9 but go ahead.

10 BY MR. NEMELKA:

11 Q And then the next line explains what this means.  
12 "For the avoidance of doubt, this Section 4.5 is not  
13 intended as a covenant not to compete but rather as a  
14 contractual restriction of access." CDK agreed not to  
15 access the Reynolds DMS, didn't they?

16 A While we're in the wind down.

17 Q Is there anything in here limited to the wind down?  
18 A The -- during the wind down. That's what we agreed  
19 to.

20 Q Where does it say this is only limited to the wind  
21 down?

22 THE COURT: You know, you can just help me out  
23 here, and I don't mean to disrupt your cross-examination,  
24 but if I understand this -- this is how I understand the  
25 agreement. You had a wind-down period during which you

1 would allow basically DMI to access using piggybacking, I  
2 guess. Some usernames that they would use.

3 THE WITNESS: Yes.

4 THE COURT: They would more or less emulate  
5 dealers that come in through --

6 THE WITNESS: That is correct.

7 THE COURT: -- the dealer door. After the wind  
8 down, if I understand this right, the wind down is over,  
9 then they have to stop that; correct? Isn't that the  
10 agreement?

11 THE WITNESS: They have to stop -- we never  
12 agreed --

13 THE COURT: They have to stop coming in through  
14 the dealer door. You're giving them a soft landing; they  
15 got five years' maximum which they can continue to do the  
16 techniques that is similar to the hostile integration.  
17 It's not hostile here because you're agreeing to it.

18 THE WITNESS: Correct.

19 THE COURT: But when that's over, when the five  
20 years is done and preferably sooner, you're going to stop  
21 that. They can't come in that door anymore; right?

22 THE WITNESS: Once this contract is over, this  
23 is done anyway, so -- that agreement is done. The  
24 contract is over. So they could do whatever they wanted  
25 to do.

1                   THE COURT: So they could start that up again.

2                   THE WITNESS: Yeah, but we -- we were not  
3 worried about that because we've got our security blocks.  
4 So we were like yep, that's fine. If you want to try it  
5 again, go for it. But our security will continue to  
6 enhance and modify.

7                   THE COURT: All right. So the whole thing --  
8 this whole thing terminates then after the wind-down  
9 period and then everybody is free to do --

10                  THE WITNESS: As soon as the last one winds  
11 down, the contract it over.

12                  MR. NEMELKA: Your Honor, I think the contract  
13 can help us here.

14                  THE COURT: Perhaps it can. Go ahead.

15 BY MR. NEMELKA:

16 Q                Let's turn to Section 6.1, please, Mr. Schaefer. Do  
17 you see that it says "Term. With the exception of the  
18 obligations set forth in Sections 4.5 (prohibition on DMS  
19 access) the terms which are set forth specifically  
20 herein, this agreement will terminate at the end of this  
21 wind-down period." Do you see that?

22 A               Um-hmm.

23 Q               So Section 4.5, contrary to your testimony 30  
24 seconds ago, does not terminate at the end of the  
25 wind-down period, does it?

1 A Correct.

2 Q And it wasn't just CDK that agreed not to access the  
3 DMS -- to access Reynolds' DMS, Reynolds agreed not to  
4 access CDK's DMS either, didn't you?

5 A I've never accessed CDK's DMS.

6 Q That's not my question. In this contract by its  
7 plain term Section 4.5, Reynolds agreed not to access the  
8 CDK DMS; isn't that right?

9 A That would be correct.

10 Q And that means that Reynolds agreed -- if it can't  
11 access the CDK DMS, Reynolds agreed not to provide data  
12 integration services for CDK dealers; isn't that right?

13 A Say that again.

14 Q If you cannot access the DMS, you cannot provide  
15 integration services for those dealers; right?

16 A I'm lost on your question.

17 Q Strike it. Okay. Let's go to Section 4.6.

18 "Limitations on use. During the wind-down period for DMI  
19 third-party client..." -- do you see where I am?

20 A Yes.

21 Q "CDK will collect, transmit and/or store operational  
22 data from the Reynolds DMS." So it's saying that during  
23 the wind-down period, CDK pull this data from the  
24 Reynolds DMS; right?

25 A Yes.

1 Q Okay. Now, go down, and then it says "only if," and  
2 then it lists three conditions. So CDK can pull the data  
3 from the Reynolds DMS only if. Do you see the *only if*?

4 A Yes.

5 Q Let's go to the third. "CDK's access to the  
6 Reynolds DMS does not materially degrade or otherwise  
7 materially adversely affect the operation of the  
8 applicable Reynolds DMS or place Reynolds and/or a  
9 Reynolds dealer at a material operational or security  
10 risk - provided, however, that any such material adverse  
11 risk -- effect or risk covered by this Section 4.6 must  
12 be demonstrated to CDK by Reynolds with clear and direct  
13 evidence and that CDK shall be given a reasonable  
14 opportunity to cure any such material adverse effect or  
15 risk." Do you see that?

16 A Yes.

17 Q Did Reynolds ever invoke this clause?

18 A Not that I can remember.

19 Q Reynolds never even invoked this clause that the  
20 thousands of usernames that CDK was using put any  
21 material effect or risk on Reynolds' system; isn't that  
22 right?

23 A During this period of time, because we had to  
24 protect it, we didn't know what they were doing, so it  
25 did not put a material impact on the system.

1 Q They're this pulling all this data. They're still,  
2 as you say, grinding, aren't they?

3 A No. We had set them up -- we set them up. We knew  
4 exactly when they are going and what they were doing. We  
5 set up all those parameters to do that.

6 Q But you never invoked this clause; right? That's  
7 right?

8 A I said no.

9 Q And if you were to invoke it, you were going to --  
10 you were required to show by clear and convincing  
11 evidence that it did put the system at risk, weren't you?

12 A We would have, yes.

13 Q Which means providing specific examples; right?

14 A That's correct.

15 Q And if you did provide such specific examples, you  
16 would at least give CDK a chance to fix it; right? Is  
17 that right?

18 A Depending on what it was.

19 Q And in the one example in the past --

20 A First we'd shut them off.

21 Q Mr. Schaefer --

22 A They'd shut off.

23 Q Mr. Schaefer, in the past ten years there was one  
24 example where you actually called Mr. Cottrell and said  
25 "I have one query running on a loop. Will you please fix

1 it?" Isn't that right?

2 A I think Steve and I had several other conversations,  
3 but that's the only one I was specific on because it's  
4 the only one that I knew at a given point in time.

5 Q Right. And he fixed that in one day, didn't he?

6 A One day doesn't -- I don't know that. That's --  
7 that's what he said. I don't know.

8 Q All right. Mr. Schaefer, will you please turn to  
9 the signature page?

10 A Yes.

11 Q This agreement was signed by Bob Brockman, wasn't  
12 it?

13 A Yes, sir.

14 Q And it also assigned -- who signed it for CDK?

15 A I think that's Ron Brockman, I think.

16 Q Right. The Senior Vice President of Business  
17 Development at CDK; right?

18 A Um-hmm.

19 Q Turn to the last page, Exhibit DEA 2. I was very  
20 interested in your testimony when you said that you could  
21 never disclose the data elements that you pulled for  
22 specific vendors to other vendors. Do you remember that?

23 A I'm sorry, I was trying to get to the -- I was  
24 trying to get to your page --

25 Q That's my fault. Thank you --

1 A You're reading awful fast on me.

2 THE COURT: We can only talk one at a time.

3 Q I'm sorry. That's my fault, Mr. Schaefer. I should  
4 let you --

5 A You knew where I was at. I was trying to get there.

6 THE COURT: Even your apologies are overlapping.  
7 One at a time.

8 MR. ROSS: An endless loop.

9 BY MR. NEMELKA:

10 Q You said that you could never disclose the data  
11 elements that you pull for particular vendors to others.  
12 Didn't you say that to Ms. Gulley?

13 A To others?

14 Q To other third parties.

15 A That's correct.

16 Q In this exhibit, this is all the information that  
17 CDK was required to give Reynolds about each of its  
18 vendor customers that it was pulling data from Reynolds'  
19 dealers from, isn't it?

20 A It's what we requested.

21 Q Right. The vendor name, the point of contact, their  
22 address, their contact name, their DMS system number,  
23 their store number, their branch number, their user  
24 login, the specific data access currently provided by CDK  
25 to these vendors, the data interfaces, the frequency of

1 the data provider -- provided, any deadlines for data  
2 delivery, the format of the data. Mr. Schaefer, do you  
3 share that information in the ordinary course with your  
4 competitors?

5 A Not unless there's an agreement. But they're  
6 sharing with me, my customer, and their information to  
7 get into it and it just gives me who the third-party is  
8 in order to talk to them.

9 Q This is about your customer?

10 A This is about -- I'm sorry. This is about their  
11 vendor and stuff is just sharing information with them.  
12 I apologize.

13 Q This is about CDK's customers that they're sharing  
14 with you; right?

15 A I said I apologize.

16 Q Do you share this type of information with your  
17 competitors in the ordinary course?

18 A Not unless I've got an agreement, a reason to.

19 Q Exactly. Not unless you have an agreement. All  
20 right. Let's turn to tab 53. This is the Reynolds  
21 Interface Agreement. This is a standard Reynolds RCI  
22 agreement; isn't that right?

23 A I assume it is.

24 Q You don't have an executed version to use in this  
25 hearing because unfortunately Reynolds didn't produce one

1 so this is what we've got.

2 MS. GULLEY: Your Honor, just one moment. This  
3 is marked highly confidential -- I'm sorry, it's not. I  
4 didn't know -- does this one have anybody's  
5 sensitive information?

6 MR. NEMELKA: It's all X's.

7 MS. GULLEY: Okay. I just wanted to check.

8 MR. NEMELKA: We'd like to move this into  
9 evidence.

10 THE COURT: Any objection?

11 MS. GULLEY: No, Your Honor.

12 THE COURT: So this is --

13 MR. NEMELKA: 53. Plaintiff's Exhibit 53.

14 THE COURT: PX53. It's admitted.

15 BY MR. NEMELKA:

16 Q This is your standard Reynolds RCI agreement;  
17 correct?

18 A Unless -- I guess. I mean unless I -- I'm going to  
19 have to read it to make sure it's my standard one because  
20 I don't know where you got it from; but...

21 THE COURT: Why don't you tell him where you got  
22 it.

23 MR. NEMELKA: It actually was out there in the  
24 public that we found.

25 THE COURT: Okay.

1 BY MR. NEMELKA:

2 Q Okay. If you go to Section 1.9, do you see it says  
3 *Nonapproved Access*?

4 A Yes.

5 Q So when a vendor signs up for RCI, they can't get  
6 data after they sign up. They are precluded from getting  
7 data from any other integrator, aren't they?

8 A Until they're certified. We allow it during the --  
9 what we call the wind-down period where they aren't using  
10 our stuff yet, which is what we've been through.

11 Q But once they're fully certified or fully integrated  
12 with Reynolds, you don't allow them to get data from  
13 anywhere else, do you?

14 A No.

15 Q So this is an exclusive dealing contract, isn't it?

16 MS. GULLEY: Objection. Leading.

17 MR. NEMELKA: I'll strike it.

18 THE COURT: I'll sustain the objection.

19 BY MR. NEMELKA:

20 Q But if a vendor signs with you, the vendor has to  
21 agree that it can't use Authenticom; right?

22 A It can't use an unauthorized access.

23 Q If a vendor signs with you, it has to agree that it  
24 can't get data from anywhere else; right?

25 A They do get -- they can get data from other places.

1 I'll give you an example; okay? As an example, they take  
2 the data and they send it off to IHS for cleansing  
3 services or other things and they give it to us to do  
4 those so they can add those services for their piece.  
5 But to go get other data out of our DMS, the answer no.

6 Q The answer is no; right?

7 A Um-hmm. And the reason --

8 Q Ms. Gulley can ask you further reasons. Please  
9 turn -- you enforce this exclusive provision that they  
10 can only get data from you. Reynolds enforces that,  
11 doesn't it?

12 A Yes.

13 Q Okay. Please turn to tab 54. This is plaintiff's  
14 hearing Exhibit 54. This is a letter that you sent on  
15 April 19 -- you personally, Mr. Schaefer, you sent this  
16 on August 19, 2016, to a vendor because that vendor used  
17 Authenticom for data integration; right?

18 A That's correct.

19 Q And you said they cannot use Authenticom for data  
20 integration because they have the contract with you,  
21 right?

22 A That's correct.

23 Q And you demanded that they pay you \$100,000 for  
24 slipping up and using Authenticom; right?

25 A When I sent it, that's what we -- for using an

1 unauthorized access, yes.

2 Q You demanded \$100,000 from this vendor, didn't you?

3 A Yes.

4 Q Is there anything in this letter, Mr. Schaefer,  
5 about data security or system integrity?

6 A Going to get data from another source that isn't  
7 secure on our system we don't know about, yeah, that's a  
8 risk that we don't want to take.

9 Q That wasn't my question. Is there anything in this  
10 letter about data security or system integrity? There  
11 isn't, is there?

12 A No.

13 Q You just wanted \$100,000 from the vendor for using  
14 Authenticom; right?

15 A No.

16 Q All right. Please turn to tab 89. We're almost  
17 done.

18 MR. NEMELKA: I'd like to move -- excuse me, I  
19 forgot. I'd like to move that prior exhibit into  
20 evidence, please.

21 THE COURT: Any objection to 54?

22 MS. GULLEY: Just I object that I don't know  
23 where the extraneous notes come from and that I  
24 previously sent Mr. Nemelka several letters regarding the  
25 confidentiality of that letter. But with that stated

1 that it's confidential and that I don't know what the  
2 notations are, I --

3 THE COURT: Okay. We'll preserve the  
4 confidentiality. And the notation is -- it looks like  
5 there's highlighting and a handwritten note.

6 MS. GULLEY: Yes, Your Honor. Thank you.

7 THE COURT: Okay. With that exception, I don't  
8 know what to make of the notation either, so subject to  
9 that proviso about the notations, it's admitted.

10 MR. NEMELKA: Thank you.

11 BY MR. NEMELKA:

12 Q Exhibit 89, Mr. Schaefer, is an email from  
13 Authenticom dated March 13, 2014, to among other people,  
14 Chris Hellyer at Reynolds; correct?

15 A Yes, yes.

16 Q Okay. And it attaches a report of Jaguar, Land  
17 Rover and other dealers that -- Reynolds dealers that  
18 Authenticom pulled data from; correct?

19 A I would assume. I don't know that specific, but I  
20 would assume.

21 Q And if you look at the attachment -- actually let's  
22 look at the email, what she writes to Reynolds. In the  
23 middle -- middle paragraph, that last sentence says "We  
24 will continue to send in requests to Reynolds and  
25 Reynolds to protect new profiles for new Jaguar orders

1 that we get." Do you see that?

2 A Yes.

3 Q So these are profiles -- these are names and  
4 passwords that Authenticom uses to pull data from  
5 Reynolds dealers that Reynolds agreed to protect; right?

6 A Yes.

7 Q And if you look at the attachment, you can see it  
8 includes the actual usernames that were used; right?

9 A That's correct.

10 Q So it's possible for you to get a list of usernames  
11 and you to protect them and not block them; right?

12 A I'm sorry?

13 Q It's possible for Authenticom to send you a list of  
14 usernames and you to protect them and not block them;  
15 right?

16 A As long as I have -- I don't -- again, I do it on  
17 behalf of the vendor who is using Authenticom. I don't  
18 do it for Authenticom.

19 Q But you could also do it if the Court ordered  
20 Authenticom to give you a list of usernames to protect;  
21 right?

22 A Not without a hell of a lot of work.

23 Q And for these names and passwords, Authenticom  
24 accessed the Reynolds DMS in an automated way; right?

25 A That's our wind-down period that we do consistently

1 across the market.

2 Q All right. If you go to the last page in the  
3 middle.

4 A Last page of?

5 Q Last page of this exhibit.

6 A Yes.

7 Q Do you see the Penske dealerships there?

8 A Yes, I do.

9 Q All right.

10 MR. NEMELKA: Can we move that into evidence,  
11 please?

12 THE COURT: You can make a motion.

13 MR. NEMELKA: Yes.

14 THE COURT: Any objection?

15 MS. GULLEY: I don't think I have any objection  
16 so long as there's no emails or anything we have to  
17 protect by the law. I'm not positive in terms of  
18 confidentiality. I have no objection to admission.

19 THE COURT: Okay. It's admitted.

20 BY MR. NEMELKA:

21 Q Okay. Last document, Mr. Schaefer. Let's turn to  
22 PHX 159.

23 THE COURT: Before we leave that document, so it  
24 attaches all these Jaguar Land Rover dealers. So is this  
25 -- is this one of those transition situations?

1 THE WITNESS: Yes, sir.

2 THE COURT: Or is it because the profiles all  
3 involve these dealers? So what's the -- I don't see any  
4 mention of a vendor here. These are all a bunch of  
5 dealers.

6 THE WITNESS: That's what the GLR, that's for  
7 Jaguar. So we have a contract with Jaguar to provide the  
8 data. They were using Authenticom, so we were in a  
9 wind-down period for that.

10 THE COURT: Okay. Thank you. Go ahead.

11 BY MR. NEMELKA:

12 Q All right. Last document. PHX 159. Are you there?  
13 Actually I don't think it's in your binder. I apologize.

14 A I thought I was losing my mind.

15 MS. GREGOR: Nicole provided a courtesy copy  
16 this morning.

17 BY MR. NEMELKA:

18 Q It's PHX -- I'm sorry, it's PHX 163. The numbering  
19 is off in the binder. Could you pull that up?

20 A That's in my book?

21 Q No, if you just would mind looking at the screen.  
22 These are my last questions.

23 THE COURT: I think it is in my book.

24 Q I'm sorry, I'm confused. 163. Do you see that this  
25 is a letter dated February 4, 2016, from you to

1 Mr. Cottrell?

2 A Yes.

3 Q And do you see that previously Reynolds had written  
4 to Authenticom to cancel the data integration contracts?

5 A Yes.

6 Q But the last paragraph says "Reynolds is hereby  
7 rescinding the above-detailed notices to terminate the  
8 statements of work. As such, none of the above  
9 statements of work shall terminate and all will continue  
10 in accordance with the terms thereof." Do you see that?

11 A Yes.

12 Q Again, Mr. Schaefer, if Authenticom was such a risk  
13 to data security and system integrity, you wouldn't use  
14 them, would you?

15 A They're still in a wind-down period with us. We've  
16 got three dealers left.

17 MR. NEMELKA: No further questions, Your Honor.

18 MS. GULLEY: Could you just leave that up there  
19 for me, please? Thank you.

20 REDIRECT EXAMINATION

21 BY MS. GULLEY:

22 Q Now, this document was signed before you were  
23 notified about the switch from Authenticom's one-to-one  
24 to DealerVault's one to --

25 A That's correct.

1 Q If you will turn back to Exhibit 1, DEA 2, which is  
2 page CDK 13, the list of data elements that you needed.

3 A Slow down. Say that again. Which one?

4 Q Exhibit 1 in my binder that I gave you.

5 A Oh. Now I'm in your binder.

6 Q Page 13. CDK 13. The list of data elements  
7 attached to the CDK contract -- and you remember what I'm  
8 talking about.

9 A Oh, yes.

10 Q The vendor name, all of these points --

11 A Yes, yes, yes.

12 Q -- that Mr. Nemelka asked you about.

13 A Yes.

14 Q With Jaguar, with DMI, with all of these so-called  
15 protected IDs, do dealers gives out those IDs or does  
16 Reynolds?

17 A Dealers give out the IDs.

18 Q In terms of --

19 A We give out the IDs of what those are. So what we  
20 do is we get those in and we change those IDs to match  
21 the acronym, the setup that we do.

22 Q And why do you ask for these elements? Are these  
23 used in connection with your building of the IDs?

24 A It's connection in building with the relationship to  
25 understand who they are so we can get in touch with them

1 and also to start to build for the IDs as well so we know  
2 what the naming convention would be and stuff.

3 Q In order to "protect" Authenticom or anyone else,  
4 would you need this for all 400 of Authenticom's vendors  
5 in order to protect those IDs?

6 A Yes, I would.

7 Q If you'll look at Exhibit 4 -- back on the 4.5 of  
8 this contract, page four and five of the contract.

9 A Is that --

10 Q It's the same one.

11 A Which one? I'm sorry.

12 Q So Section 4.5 --

13 A Yes.

14 Q -- the *Prohibition on Knowledge Transfer*. Earlier  
15 you had talked about you exchanged intellectual property.  
16 Was that exhibit to the contract what you were referring  
17 to in terms of the exchange of the intellectual property?

18 A That was some of it, yes.

19 Q And so does 4.5 say that the parties will never  
20 access the DMS or does it say they won't take steps to  
21 assist others?

22 A Steps to assist others.

23 Q Would you have been happy to have the additional  
24 agreement that CDK and DMI would never access the DMS?

25 A Yes, I would.

1 Q Isn't that the goal of all of this blocking?

2 A That's -- yes, I would have.

3 Q Why isn't that in here?

4 A CDK wouldn't agree to it.

5 MS. GULLEY: Thanks. Nothing further.

6 MR. NEMELKA: Your Honor, I forgot to move --  
7 ask if we could have PHX 163 entered into evidence.

8 THE COURT: Any objection?

9 MS. GULLEY: Sorry.

10 THE COURT: You had it just a second go. That's  
11 the nonrescinding letter?

12 MS. GULLEY: No objection. Thank you.

13 MR. NEMELKA: It's the nonrescinding letter.

14 THE COURT: Okay. 163 is admitted. With that  
15 is Mr. Schaefer done? Okay. You're done. Thank you.

16 (Witness excused at 3:31 p.m.)

17 THE COURT: Let's do another witness before we  
18 take a break. Who is it?

19 MS. MILLER: Your Honor, we're calling Malcolm  
20 Thorne to the stand, please.

21 Your Honor, may I approach?

22 THE COURT: Thank you.

23 **MALCOLM THORNE, DEFENDANTS' WITNESS, SWORN**

24 THE COURT: You heard the speech about the  
25 microphone?

1 THE WITNESS: I have. Keep it close.

2 THE COURT: About a foot. Not too close.

3 THE WITNESS: Okay.

4 THE COURT: Whenever you're ready.

5 DIRECT EXAMINATION

6 BY MS. MILLER:

7 Q Good afternoon, Mr. Thorne.

8 A Good afternoon.

9 Q Will you please state your name for the record.

10 A Malcolm Laurick Thorne.

11 Q Can you tell the Court your title?

12 A I'm formerly the Global Chief Strategy Officer of  
13 CDK.

14 Q And you say formally. Do you currently have a title  
15 with the company?

16 A I am -- will be with the company through July 1st.  
17 I have -- we have hired my successor and he replaced me  
18 on April 17.

19 Q And do you already have your next position lined up?

20 A I don't.

21 Q And are you leaving voluntarily?

22 A I am.

23 Q Okay. Can you tell me what CDK's historical  
24 approach to data security was?

25 A What our historical approach to security was? We

1 have a MSA with our vendors.

2 Q I'd like you to turn in your binder to tab 4. This  
3 is defendants' Exhibit 4. This is an example of CDK's or  
4 at the time ADP's Master Services Agreement.

5 A It is.

6 MS. MILLER: Your Honor, I'd like to move this  
7 into evidence.

8 THE COURT: Any objection?

9 MR. MILLER: No.

10 THE COURT: It's admitted.

11 BY MS. MILLER:

12 Q And if you'd also look at tab 10, defendants'  
13 Exhibit 10. This is a later version of the same Master  
14 Services Agreement, is it not?

15 A Yes.

16 MS. MILLER: Your Honor, I'd like to move this  
17 into evidence.

18 THE COURT: Any objection?

19 MR. MILLER: No, Your Honor.

20 THE COURT: It's admitted.

21 BY MS. MILLER:

22 Q Mr. Thorne, how long have CDK's contracts with  
23 dealers prohibited unauthorized third-party access?

24 A Roughly since 1995.

25 Q Have there been exceptions to these provisions?

1 A There have been some exceptions to this, yes.

2 Q And how far back have those exceptions gone?

3 A I'm not aware how far, but there have been  
4 exceptions over the course of years. We started to phase  
5 out exceptions in June of 2014, July of 2014 when I took  
6 this position. And today we do not allow any exceptions  
7 at all to that agreement.

8 Q If you could look in your binder at Exhibit 21. And  
9 this document is entitled *Information Security Guidelines*  
10 for *ADP Dealer Services Clients*. Do you see that?

11 A Yes.

12 Q Just for clarification, CDK used to be a division of  
13 ADP; is that correct?

14 A That's correct.

15 Q And CDK spun off as a separately incorporated  
16 publicly traded company, did it not?

17 A That's correct.

18 Q And that was in April of 2014?

19 A No. It spun off on October 1st of 2014.

20 Q I apologize. It was announced, I believe, in  
21 April --

22 A That is correct.

23 Q -- of 2014.

24 A That is correct.

25 Q And spun off in October of 2014. So ADP was the

1 predecessor.

2 A Correct.

3 Q So again, Exhibit 21 is Information Security  
4 Guidelines for ADP Dealer Services Clients. Are you  
5 familiar with this document?

6 A I am.

7 Q Is it your understanding that this document  
8 represents CDK's, or at the time ADP's, corporate policy  
9 in 2013?

10 A It is.

11 Q I'd like specifically -- it indicates that this is  
12 "Considerations and best practices for your information  
13 security plan." Do you see that on the first page?

14 A Yes.

15 Q What was your understanding of where this document  
16 or who this document was prepared for?

17 A This document was prepared for the client community  
18 that we had.

19 Q So these were considerations for your dealer  
20 services clients; correct?

21 A Correct.

22 Q Can you please turn to page -- what is Bates  
23 numbered CDK 0000764.

24 A Okay.

25 Q And actually on the preceding page at the bottom it

1 says Third Party Access. *Third Party Data Access.*

2 A Yes.

3 Q It says "Giving the keys to your most valuable  
4 asset, your customer database should be done with careful  
5 planning and attention to the details. Your attorney  
6 should be engaged in writing these contracts. Put  
7 everything in writing. Don't just take their word for it  
8 that they won't access data you have not given permission  
9 to see." And on the top of the next page, "Never allow  
10 third parties to use your user ID or screen scrape your  
11 data." And it goes on to explain why never giving third  
12 parties your user ID or screen scraping your data is a  
13 good idea; correct?

14 A Correct.

15 Q And this was the recommendation of the company with  
16 respect to screen scraping with respect to user IDs;  
17 correct?

18 A Yes. This was the recommendation as of March 2013.

19 Q Was the company always consistent in enforcing the  
20 restriction on third-party access at this time?

21 A No, it was not.

22 Q Did there come a time when that changed?

23 A Yes, there did.

24 Q And when was that?

25 A When I took this position around July of 2014, we

1 started to really enforce the security practices and the  
2 provisions in this agreement.

3 Q Can you explain to me why that change took place?

4 A There were a number of changes in the marketplace.  
5 Let me give you sort of a context where the market  
6 existed at this particular point of time. First of all,  
7 I'll put this in context. We are a very small division  
8 inside a very large company. We're about to go public.  
9 We have our own IPO. We know that we're going to have a  
10 company --

11 THE COURT: CDK is going public?

12 THE WITNESS: CDK is going public, separating  
13 off from our parent. We know that we're going to have a  
14 market cap of billions of dollars. We, as a leadership  
15 team, executive team, feel significant pressure and  
16 accountability to our investor base, our board, our  
17 employees to ensure that our business is secure.

18 So I come into this position at the time. My CEO  
19 says to me "Malcolm, I'm concerned about the Third Party  
20 Access Program and that we're not getting enough value  
21 for this particular program. I'm also concerned about  
22 security risks that we have in our business. Would you  
23 please take a comprehensive review of this entire program  
24 and everything that's here."

25 During this time, there are a number of things going

1 on in the marketplace. So leading up to this, there are  
2 significantly increased pressures on dealers relative to  
3 data security, privacy, and legal concerns about all of  
4 the risks relative to data information and security. As  
5 is referenced by this document that we published to our  
6 clients in March of 2013, as is referenced by us working  
7 collaboratively with NADA in the 2013 time frame to  
8 jointly put a series of best practices together with the  
9 market and, in fact, at this time we had spent many  
10 years, several years trying to educate the market on the  
11 best practices for security in conjunction with NADA.

12 In addition, data breaches and security hacks are  
13 becoming very frequent public knowledge; right? So  
14 you've got Facebook. You've got Sony. You've got  
15 Target. You have massive frequent data breaches  
16 occurring on a large scale, having massive disruption and  
17 huge implications to large publicly traded companies. At  
18 the same time, our customers are facing an  
19 ever-and-changing environment. So the number of vendors  
20 that are connected to our DMS ecosystem is growing  
21 rapidly; the size and scope of our DMS has increased  
22 massively over the years; manufacturers are now building  
23 extensive third-party applications and they're looking  
24 for rich bidirectional integration for these  
25 applications. And so our customers are coming to us at

1 this time saying I want transparency to where all my data  
2 is going. I'm getting pressure from my attorneys. I'm  
3 getting pressure from vendors. I want to know where all  
4 this data is flowing, not just from vendors, but from my  
5 employees and from the manufacturers. They want much  
6 broader access --

7 THE COURT: Who's asking you? You say your  
8 customers are coming --

9 THE WITNESS: Our dealer customers are coming to  
10 us also.

11 THE COURT: Dealer customers.

12 THE WITNESS: Dealer customers. The  
13 manufacturers are coming to us saying --

14 THE COURT: So the car dealers are saying I need  
15 more transparency and security.

16 THE WITNESS: Correct.

17 THE COURT: Okay.

18 THE WITNESS: The manufacturers are coming to us  
19 saying we want to launch nationwide programs that can be  
20 run by all of our dealer bodies and we want rich  
21 bidirectional integration to your applications to enable  
22 these programs. And these programs would, you know, be  
23 things like CRM applications, sales applications, service  
24 appointment applications.

25 In addition to that, I am sitting faced at this time

1 taking this job with an existing 3PA Program that has  
2 been put in place and has evolved somewhat in an *ad hoc*  
3 manner over roughly a 15-year period. And to be quite  
4 frank, I would say that this program was not particularly  
5 well managed up until this point in time. And so I'm  
6 looking at a situation where the vendors in this program  
7 have very different levels of access. They have very  
8 different levels of pricing. And I'll give you an  
9 extreme example, but it shows just the extent of this.

10 I could have a vendor that has a service appointment  
11 application, so it's a bidirectional integration  
12 application. And that vendor at the time that I took  
13 this job was paying \$250 a month. Maybe they were  
14 writing back 20 fields. I had another vendor that might  
15 have had 200 fields of information that they are writing  
16 back to the system and they're paying \$25 a month. There  
17 was no consistency to the enforcement of the program and  
18 the level of access.

19 BY MS. MILLER:

20 Q All right. So just to place this in time, this is  
21 when you first -- this is when you were taking on your  
22 new role as Director of Strategy in July of 2014.

23 A Correct.

24 Q So you undertook this review of the system.

25 A Correct.

1 Q Okay.

2 MS. MILLER: And before I forget, Your Honor, I  
3 think I forgot to move Exhibit 21 into evidence. I'd  
4 like to do so at this time.

5 THE COURT: Any objection?

6 MR. MILLER: No, Your Honor.

7 THE COURT: 21 is received.

8 MS. MILLER: Thank you, Your Honor. And that's  
9 defense Exhibit 21.

10 BY MS. MILLER:

11 Q As part of this process, did ADP or CDK ever conduct  
12 or review to determine whether hostile integration by  
13 third-party vendors was causing the DMS to experience  
14 data corruption issues?

15 A Yes, they did. They had conducted an extensive  
16 study in March of 2013.

17 Q If you'll look at Exhibit 26 in your binder.

18 A Yes.

19 Q Is this the study that you are referring to?

20 A This is the study.

21 MS. MILLER: And Your Honor, this is defendants'  
22 Exhibit 26 and I would move to have this admitted.

23 THE COURT: Any objection?

24 MR. MILLER: No, Your Honor.

25 THE COURT: It's admitted.

1 BY MS. MILLER:

2 Q So this is a copy of the review that was performed  
3 to determine whether -- about hostile integration on to  
4 ADP systems; is that correct?

5 A That's correct.

6 Q And what was the ultimate conclusion of the study?

7 A The ultimate conclusion of the study is that  
8 basically every single DMS system that we had had some  
9 level of data corruption on it, and we believed that was  
10 largely caused by third-party integrators.

11 Q So July 2014, you have described all of the things  
12 that the company is facing. You've got 100 percent of  
13 your systems have some level of corruption, you're facing  
14 all of these challenges that you just described in terms  
15 of what the company was facing, and you're getting ready  
16 to spin off as a publicly traded company. So what do you  
17 do?

18 A So we built a revised strategy around this, a  
19 strategy called *SecurityFirst* which really had four key  
20 pillars to it.

21 Q Did the company seek -- was this something you came  
22 up with on your own or did you seek some outside guidance  
23 on the strategy?

24 A No, we sought a lot of help. We sought a lot of  
25 help from a whole bunch of internal experts that did a

1 lot of analysis inside our business. We met with a large  
2 number of our clients. In fact, we have three major  
3 client groups: We have a CIO user group, we have a CFO  
4 user group, and we have a CEO called the Strategic  
5 Advisory Board Dealer Group. We met and discussed this  
6 topic with all three of those dealer group bodies at  
7 meetings that we conducted with them. We consulted with  
8 outside parties like NADA in this. And we also  
9 commissioned PricewaterhouseCoopers in January of 2015 to  
10 conduct a security audit of our business.

11 Q And would you turn in your binder to defendants'  
12 Exhibit 25.

13 A I'm there.

14 Q Is this the PwC security audit you just mentioned?

15 A Yes, it is.

16 Q And can you tell me what GSO stands for?

17 A Global Security Organization.

18 MS. MILLER: Your Honor, I'd like to move  
19 Defendants' 25 into evidence.

20 THE COURT: Any objection?

21 MR. MILLER: No objection, Your Honor.

22 THE COURT: All right. It's admitted.

23 BY MS. MILLER:

24 Q Does this document reflect the results of PwC's  
25 security audit?

1 A Yes, it does.

2 Q I'm not going to ask you to read the whole document  
3 in the record obviously, but can you tell me what the  
4 ultimate -- let me back up. Did you have any discussions  
5 with PwC about their audit results?

6 A Yes, we did.

7 Q And as a result of this security audit and your  
8 discussions with PwC, what was their ultimate  
9 recommendation and the company's ultimate conclusion?

10 A So our ultimate recommendation conclusion was to  
11 eliminate hostile access providers in the marketplace.  
12 And we also identified many, many areas that CDK needed  
13 to invest to improve security and minimize security risk  
14 for the company.

15 Q And I want to clarify something you said. You said  
16 you wanted to eliminate hostile integration in the  
17 marketplace? Or what it you wanted to eliminate hostile  
18 integration out of CDK systems?

19 A Eliminate hostile integration into CDK systems.

20 Q And why was this of such concern to the company?

21 A So as is evident from the prior report, hostile  
22 integration caused us significant costs concerned with  
23 hostile integration. So it was very expensive for us to  
24 have hostile integrators access our DMS, both for reading  
25 data and writing data, and that caused a significant

1 amount of issues to our business.

2 Q I think you mentioned a moment before that as part  
3 of this introduction of this new security approach, this  
4 new SecurityFirst approach, you were going to do a look  
5 at the Third Party or the 3PA Access Program; is that  
6 correct?

7 A That is correct.

8 Q Can you look at tab 24 in your binder? That's  
9 defendants' Exhibit 24. Let me know when you're there.

10 A I'm there.

11 Q Okay. This document is entitled *Third Party Access*  
12 *Strategy* and it says *Strategy Refresh*. Do you see that?

13 A Yes.

14 MS. MILLER: And Your Honor, I'd like to move  
15 defendants' Exhibit 24 into evidence.

16 THE COURT: Any objection?

17 MR. MILLER: No objection, Your Honor.

18 THE COURT: It's admitted.

19 BY MS. MILLER:

20 Q Can you tell me what was the refresh?

21 A So the refresh is the revision of the 3PA Program,  
22 the recommended strategy revision of the 3PA Program.

23 Q And I want to get a sense from you, if I can, some  
24 of the considerations that went into the refresh strategy  
25 and why you all felt that the 3PA Program needed to be

1 overhauled. Can you turn to page 14 of the slide deck,  
2 CDK 0000799?

3 A I'm there.

4 Q On the right-hand side under *Implications*, it says  
5 "CDK is the largest DMS provider that is not considered  
6 secure by the industry. We are an outlier." Do you see  
7 that?

8 A Yes.

9 Q What does that mean?

10 A Several other DMS providers: Reynolds, DealerTrack,  
11 Auto/Mate had implemented many security measures that CDK  
12 at this point had not implemented. Many of them had  
13 real-time integration access, single sign-on, some of the  
14 secure layer technologies, some auditing capabilities,  
15 detection methods for hostile access, things like that.  
16 We were behind.

17 Q Was it known throughout the industry at this time  
18 that Reynolds had a secure DMS?

19 A Yes.

20 Q And it had for some time; yes?

21 A Yes, for quite awhile.

22 Q On this same slide it says "CDK is unable to capture  
23 full value for our CDK-approved integration due to lack  
24 of DMS security."

25 A I'm sorry, which slide are you on?

1 Q Sorry, wrong slide. I'm sorry. Next one down. "R&R  
2 has suffered..." -- right underneath that. "R&R has  
3 suffered significant brand damage as a result of their  
4 forced march security strategy with dealers. A lesson  
5 for CDK."

6 Can you explain to me what this paragraph means?

7 A Reynolds had lost clients in the marketplace based  
8 on their security position.

9 Q So you knew that --

10 THE COURT: What was the forced march?

11 THE WITNESS: So the -- really what the choice  
12 was for vendors to integrate into RCI or to push data  
13 directly.

14 THE COURT: So the forced march is kind of the  
15 elimination of the third-party integrators?

16 THE WITNESS: Yes.

17 THE COURT: Okay. Thanks.

18 BY MS. MILLER:

19 Q So R&R had gone -- had closed its system and had  
20 suffered significant brand damage as a result of their  
21 decision to do so.

22 A Yes.

23 Q But CDK was deciding to do so nonetheless.

24 A Yes. We were well aware that this was a risk. We  
25 expected to lose some dealers over this. But we thought

1 that this was the right thing to do from a company  
2 perspective.

3 THE COURT: I'm not quite sure I get the point  
4 here. What was the lesson that CDK learned?

5 THE WITNESS: Well, we knew that there was a  
6 risk that we would lose dealers over increasing security  
7 that was here. So, you know, we had spent years trying  
8 to educate our dealers through the security documents,  
9 through our GSO, don't hand out user IDs, don't allow  
10 screen scraping. And so we knew that as we took more  
11 proactive measures to enforce the security, we would  
12 upset some dealers and we would likely lose some clients  
13 over this. And we were willing to lose those clients  
14 because we believed that to protect our brand, to protect  
15 our multi-billion dollar market cap, to protect the fact  
16 that we didn't want to end up on the front page like  
17 Target, we were willing to accept that risk.

18 THE COURT: It seems odd to put it that way  
19 because it seems like you were -- the lesson to learn was  
20 don't try to do it as a forced march. You're telling me  
21 what the lesson was is that's just part of the damage  
22 you're going to have to suffer if you do this.

23 THE WITNESS: Well, so there's -- I mean we  
24 tried in this process -- and we did learn this. We tried  
25 to work collaboratively with the marketplace to get them

1 to move. So we used education extensively. We tried to  
2 convince people to move to secure methods, to move to the  
3 3PA Program. We then offered people, when we launched  
4 the program, we offered them phase-in for new pricing.  
5 We offered them wind-over periods so we didn't force them  
6 to move immediately. We gave them periods where they  
7 could -- so we tried to be as accommodating as possible.  
8 And I think that was a lesson learned that if we could  
9 try to be as accommodating as possible in the  
10 marketplace, it would help us with our brand. It was  
11 still a risk that we knew that we would -- some people  
12 would be upset with us.

13 THE COURT: All right. Go ahead.

14 BY MS. MILLER:

15 Q So you spoke a moment -- the point of the refresh  
16 you spoke a moment ago about, you had to refresh the  
17 entire program and realign the program with the value  
18 that you thought CDK was delivering but not receiving  
19 value for. Can you tell me about that?

20 A Yes. So I mean one of the things is that the  
21 program, as it was designed, did not really differentiate  
22 between extract only, basic writeback capabilities, and  
23 things that leveraged intellectual property. So we, when  
24 we designed this program, we took a very sort of systemic  
25 approach to look at writeback extract and IP-related

1 functions and assigned very different values to those.  
2 And based on history, we really hadn't been getting our  
3 fair share of value for a lot of the intellectual value  
4 that CDK was creating. To be quite honest, when I took  
5 this position, I thought this was a good business  
6 opportunity for CDK for something that they had not done  
7 in the past.

8 Q So as part of -- as part of the refresh, did the  
9 pricing structure of the 3PA Program change?

10 A Yes, the pricing structure of the 3PA program did  
11 change.

12 Q How?

13 A So it changed in a number of ways. The first way it  
14 changed is every vendor pays the same price. So we  
15 standardized -- first of all, we standardized pricing  
16 across the whole program. Everyone pays the same price  
17 and we are fully transparent with pricing. So pricing is  
18 published. It's on the internet. You can look it up.

19 The second thing is we created intended use  
20 categories. So vendors are licensed by intended use. We  
21 bundled, to the best of our ability, what vendors -- what  
22 data vendors needed, both data coming out and going into  
23 the system for a particular application. An example  
24 would be a CRM vendor or a service appointment vendor.  
25 And we tried to create bundles of applications that

1 vendors could use. And then we assigned new pricing to  
2 those vendors.

3 Then what we did in order to align that pricing is  
4 we started to recontract all existing vendors in the  
5 marketplace and sort of level the playing field so that  
6 everybody, regardless of large vendors or small vendors,  
7 everyone paid the same amount of money for the access  
8 that they received.

9 Q Did every one of CDK's clients' prices, its vendors  
10 prices go up?

11 A No.

12 Q You've heard testimony --

13 THE COURT: Hold on. Mostly they did though.

14 THE WITNESS: I would say mostly they did, yes.  
15 That's a fair statement.

16 THE COURT: I mean the implication from "we  
17 weren't getting the value that we deserved" suggest you  
18 were going to charge more. Maybe that's simplistic, but  
19 that's the takeaway for me.

20 THE WITNESS: No, we charged more. We were not  
21 getting our fair share of value in the marketplace.

22 THE COURT: Okay.

23 BY MS. MILLER:

24 Q You've heard testimony that they went up  
25 astronomically. Did they all go up by the same amount?

1      Were they based -- what were the increases based on?

2      A      So the increases were based on the value derived by  
3      the end-user for that particular point of integration,  
4      and that's what the basis was for the price that was  
5      being charged.

6      Q      Did the dealers -- was it simply the dealer's price  
7      went up for the same thing they'd been receiving before?  
8      Or were their additional value adds as part of those  
9      prices?

10     A      So there's significant additional value. So first  
11     of all, I'll give you several examples. So one is a  
12     vendor, based on historical contracting, potentially  
13     could have had access to, say, 500 fields to download and  
14     200 fields to writeback. But based on historical  
15     contracting, they were only allowed 30 fields to extract  
16     and 4 fields to writeback.

17           So first of all, based on a category, pretty much  
18     everyone got the broadest level of access for every  
19     category. You had the ability to extract as much data as  
20     you wanted, and in that category you could writeback all  
21     the data into the system for that category. So vendors  
22     and thereby their dealers or manufacture partners got  
23     significantly higher levels of integration available to  
24     them in the same type of categories.

25           In addition, as part of this we have made

1 substantial investments in security which benefit the  
2 entire ecosystem. So we have written -- I think we've  
3 had some discussion today about real-time integration  
4 points where the moment a record is created we pushed  
5 that out. We have built the same technology so a vendor  
6 does not have to query our system. That has substantial  
7 benefits to people that are in the program.

8 We also implemented things like single sign-on.  
9 We've had six data platforms that people were integrating  
10 to in various shapes and form which we have standardized  
11 on one global data platform across all of our products,  
12 which is simplifying the integration costs for a number  
13 of our vendors.

14 And then another example is we spent a significant  
15 amount of money building our DDX product. And what DDX  
16 is is across our entire ecosystem, we wanted to provide  
17 our dealers with complete transparency of every data flow  
18 that was occurring in an ecosystem, both outbound and  
19 inbound to the system. And so we built a product called  
20 DDX. It reports on not only flows to third parties, but  
21 it also reports on flows to manufacturers as well as  
22 outflows on behalf of the dealer. And that provides the  
23 dealership with full transparency of all data flows in  
24 and out of the system, and that is provided free of  
25 charge. That was a massive investment.

MALCOLM THORNE - DIRECT

1       If you think about the size and scope of data  
2 processing that CDK does and the ability to provide, you  
3 know, complete data flow accountability, that ecosystem  
4 is a very large investment to do that.

5 Q       We've heard testimony that there is a restriction  
6 that CDK puts on putting a line item of the 3PA Program  
7 charges on its vendor invoices. Are you familiar with  
8 that?

9 A       Yes, I am.

10 Q       Why?

11 A       So our philosophy is that the benefit of this  
12 bidirectional integration and this flow into our system  
13 and our intellectual property is housed in the  
14 application that is provided to the dealer. And we don't  
15 believe that that cost should be passed on to the dealer.  
16 We believe that it should be borne by the application  
17 provider. And in fact, one of the things that is  
18 occurring in the marketplace is, say, a vendor prior to  
19 this refresh paid \$150 for CRM and then in a revision of  
20 this they paid \$225 for CRM.

21       What's happened is previously vendors never line  
22 itemed their bill. They never charged the dealer  
23 anything for integration access. Now they took this  
24 opportunity to go to the dealer and say oh, by the way,  
25 we've got this new massive charge from CDK, and in fact,

1 we have at least two known cases and we believe there are  
2 many more cases where dealers are significantly marking  
3 up this charge in the marketplace to make us look bad in  
4 the marketplace.

5 THE COURT: You mean where vendors are marking  
6 up the charge.

7 THE WITNESS: Vendors are making up the charges,  
8 yes. So we were trying to prevent this from occurring.  
9 We thought that there would be behavior in the market  
10 that would be negative, but we thought that vendors  
11 should be bearing the cost, just like they bear other  
12 third-party software or integration costs inside of the  
13 agreement, don't line item them, and we anticipated some  
14 potential behavior like this. The situation has been  
15 much worse than we ever anticipated to be honest.

16 THE COURT: I'm a little confused because I  
17 thought you talked about how perfectly transparent you  
18 were about the pricing.

19 THE WITNESS: We are perfectly transparent with  
20 the pricing. Our pricing is all published on the  
21 internet. The access is here. But, you know, as I think  
22 Mr. Schaefer mentioned in his testimony, it's not as  
23 simple as sort of just line item one individual piece;  
24 right? So somebody can have lots of different data  
25 integration points. So if a dealer has 10 stores and 12

1 different vendors, it's not always that simple to figure  
2 out exactly what services they've signed up for at a  
3 given point in time.

4 So they struggle sometimes, as much as we've tried  
5 to work through this issue, they struggle sometimes to  
6 understand exactly what the vendor is saying to them  
7 they're paying versus what the line item pricing is.

8 THE COURT: If I'm a dealer, I can go on your  
9 website and I can look up --

10 THE WITNESS: You can look it up. It's all  
11 there.

12 THE COURT: -- what you're telling vendors they  
13 have to pay.

14 THE WITNESS: Yes. Yes.

15 THE COURT: But your rule is just that the  
16 vendor can't put a line item on the bill for data  
17 integration from --

18 THE WITNESS: Correct. From CDK.

19 THE COURT: Okay. All right.

20 BY MS. MILLER:

21 Q Mr. Thorne, can you turn to Exhibit 31 in your  
22 binder. And this is again defendants' Exhibit 31. The  
23 prior presentation, which was Exhibit 24, was dated 12-3,  
24 2014, and this one is dated 10-31, 2014, so this would  
25 be, am I correct, an earlier iteration of that?

1 A Yes. So this was an iterative process that we were  
2 developing the strategy in the fall of 2014 and this is  
3 an earlier document related to the same topic.

4 MS. MILLER: And Your Honor, I'd like to move  
5 this into evidence.

6 MR. MILLER: No objection.

7 THE COURT: It's admitted.

8 BY MS. MILLER:

9 Q Can you turn to slide 24. Let me know when you're  
10 there.

11 A I am here.

12 Q And this slide is entitled *DMS Provider Strategy*;  
13 correct?

14 A Correct.

15 Q And it says *Rationale For Providing Integration*.  
16 Can you explain to me what this slide says?

17 A So this slide is based on October is a discussion  
18 about what our strategy is relative to DMS providers. So  
19 there was a point in time when we did not allow DMS  
20 vendors into the 3PA Program at all.

21 Q Okay. And why was that?

22 A I wasn't there when the rule was created; so...

23 Q So what would be the benefit of allowing DMS  
24 providers to be in the 3PA Program?

25 A So if you looked at the market at this point in time

1 when this document was created, there's a couple things  
2 going on. We, as a company, were trying to find this  
3 balance between providing our dealers with choice and  
4 broad access to our ecosystem, at the same time ensuring  
5 that it was secure and we protected our intellectual  
6 property rights; right? So what was happening in the  
7 marketplace is us, as DMS vendors, as well as the entire  
8 marketplace, the number of late applications that exist  
9 around the DMS has been exploding. It started in the  
10 early 2000s. There's sort of been a second wave, I would  
11 say, over the last five years as private equity has  
12 gotten aggressive in the automotive market. Innovation  
13 has been rampant. And so there are a number of  
14 applications that exist around the DMS. And so we, as  
15 DMS vendors, have a number of applications that we would  
16 like to sell to nonCDK DMS clients and our clients want  
17 to use applications from other DMS vendors.

18 So I heard you -- Cox was mentioned yesterday. Cox  
19 has a lot of applications. Reynolds has applications.  
20 So our customers want choice. They want choice in the  
21 marketplace. And part of that choice is they want choice  
22 from DMS vendors, not just from the hundreds and hundreds  
23 of late application providers who are not in the DMS  
24 market. So part of this was how do we -- and there was a  
25 debate on the strategy and then ultimately a decision was

1 made that we would open up and change the historical  
2 position prior to me taking this job. And so we decided  
3 basically to open the program to DMS vendors and get them  
4 into the 3PA Program.

5 Q So that someone like a Cox who owns DealerVault  
6 could bring its layered applications and offer them to  
7 CDK vendors and CDK could take its layered applications  
8 and offer them to DealerVault customers.

9 A So you said DealerVault. You meant DealerTrack.

10 Q I'm sorry, DealerTrack.

11 A DealerTrack. Yes, correct statement. Yes.

12 Q Corrected by DealerTrack. Thank you. Under that  
13 second point there -- there's two bullet points under No.  
14 2. The second one says "Secure the CDK DMS through  
15 eliminating opportunities for key enablers of hostile  
16 integration." And it says "R&R - Authenticom, Dominion  
17 and SelectQu." Do you see that?

18 A I do.

19 Q What does that mean?

20 A So there's a standard contract or standard piece of  
21 language in our 3PA agreement that states that if you are  
22 in the 3PA Program, you agree not to use hostile access  
23 to access our DMS. So by signing up Reynolds to this  
24 program, signing up Dominion, we would -- it would help  
25 us with the goal of eliminating hostile access into our

1 DMS.

2 Q So not only were you expanding the vendor  
3 application options for your dealers, but you were also  
4 succeeding in eliminating hostile integration into your  
5 system and thereby securing your system.

6 A Correct.

7 Q Could you turn to slide --

8 THE COURT: Before you move on, this is going to  
9 seem like really a detailed question. But in that  
10 parenthetical in that same bullet point, you have R&R,  
11 then you have a dash, and then you have Authenticom,  
12 Dominion, SelectQu. Punctuation is a little weird there  
13 because it's not just a list of four entities. R&R is  
14 first and then there's a dash. Why?

15 THE WITNESS: So somebody on my team drafted  
16 this. I mean the document actually -- so there's another  
17 one that doesn't make sense. SelectQu is owned by  
18 Dominion. Authenticom has nothing to do with Reynolds.  
19 So I don't know what the --

20 THE COURT: And Reynolds never did hostile  
21 integration in the first place.

22 THE WITNESS: Well, so the point is Reynolds did  
23 not do hostile integration, but Reynolds had applications  
24 that they had acquired that were using hostile  
25 integration and were continuing to use hostile

1 integration.

2 THE COURT: All right. Here's another question  
3 I've got for you. So one of the motivations for the  
4 refresh was security. But one of the motivations for the  
5 refresh was, as you put it, to derive the value you think  
6 you deserved from the Third Party Access Program. And  
7 you said that you wanted to price it based on the value,  
8 the value that is derived by the user for the access. By  
9 that I think you mean the vendors; right?

10 THE WITNESS: It's based on what the vendor is  
11 doing, but also the value of intellectual property that  
12 CDK is contributing to that.

13 THE COURT: But one of the factors that would  
14 influence the price you would set is the competitive  
15 environment in which you would be providing this service  
16 to vendors; is that right?

17 THE WITNESS: Yes, that is correct. So that is  
18 a factor.

19 THE COURT: So you've got people in the  
20 environment at this time that are providing more or less  
21 buffet-style unlimited access for \$50 a month.

22 THE WITNESS: No, they don't provide unlimited  
23 access for \$50 a month.

24 THE COURT: It's not quite unlimited. But the  
25 Authenticom model here is for 50 bucks a month or even

1 less sometimes. You really get whatever the vendor needs  
2 for integration.

3 THE WITNESS: So let's take a comparison. So a  
4 dealer testified yesterday about needing service  
5 appointments -- service repair order data for a recall  
6 program; okay? And I don't know exactly what he paid  
7 because there was a 65, a 45 and a 35 number mentioned.  
8 But on the CDK, that is \$49 a month. So in order to run  
9 a recall program, be able to contact customers' vehicles  
10 and have open errors, that would be \$49 a month under the  
11 3PA Program. So we absolutely looked at competitors'  
12 pricing and it is a factor in what we did. And so  
13 pricing is higher than dealer -- than Authenticom's. But  
14 it's not a magnitude higher.

15 THE COURT: I guess that what I'm getting at  
16 here is it sure seems to make sense to me from an  
17 economic perspective that if you wanted to refresh this  
18 so you could get better value for your Third Party  
19 Access, it would be a nice thing to get the third-party  
20 integrators out of the market. That would be very  
21 consistent with your objective here of getting better  
22 value for your Third Party Access if you could knock out  
23 the guys that were doing it at the low price.

24 THE WITNESS: It doesn't have anything to do  
25 with knocking out the guys who have a low price.

MALCOLM THORNE - DIRECT

1 They're, you know, violating my MSA, running my system,  
2 have the potential to corrupt all my data; all the other  
3 associated costs that have gone on. I have no concern  
4 with the other portions of Authenticom's business that  
5 they do: Data cleansing or anything else. But as far as  
6 hacking into my system, distributing passwords around the  
7 environment which potentially have administrative access  
8 to my system, I take serious issue to that.

9 THE COURT: So it wasn't the reason you did it,  
10 it just was a convenient benefit.

11 THE WITNESS: What was a convenient benefit?

12 THE COURT: To eliminate hostile integration.

13 THE WITNESS: It's not a convenient benefit. We  
14 view hostile integration as insecure. And as many people  
15 have testified here, they believe it is insecure. We  
16 believe hostile integration is fundamentally secure. The  
17 fact that you are screen scraping technology, you have  
18 access to data you shouldn't have access to, passwords  
19 are flying over email, this is a fundamentally insecure  
20 mechanism. We do not view this as a viable way to be  
21 viewing this.

22 And this is a change of opinion. We were in this  
23 business at one point. We made a strategic decision at  
24 this time to exit this for these reasons.

25 THE COURT: Okay. All right. Go ahead.

MALCOLM THORNE - DIRECT

1 BY MS. MILLER:

2 Q Mr. Thorne, if you can turn to page six in that same  
3 deck.

4 A Page six in the same deck?

5 Q Yes, sir.

6 A 31.

7 Q Entitled *3PA Product Strategy*.

8 A Yes.

9 Q Do you see that? What was the purpose of this  
10 slide?

11 A So this is what I talked about earlier where  
12 previously there was no real differentiation between  
13 extract, writeback and IP-based functions. So this  
14 started to talk about how we differentiated between  
15 standard extract, things that were written back to the  
16 system, and then things that were using significant  
17 amounts of CDK IP.

18 Q When you say in point No. 3 here "Extract functions  
19 are regarded as dealer's data and have a limited risk and  
20 cost to 3PA." Do you see that?

21 A I do.

22 Q What did you mean by that?

23 A So extract functions are regarded as dealer's data  
24 and have a limited risk and cost. So the limited risk is  
25 if they are using our 3PA connection mechanism, so within

1 a proved method of connection there is a limited risk to  
2 extract functions. There is a significantly higher risk  
3 in writeback functions because you have the ability to  
4 corrupt the data, as is shown by the report that we have.  
5 And then the limited cost is that -- is when they are  
6 done in conjunction with 3PA. So used in our 3PA system.

7 Q Is the risk associated with extracting data equally  
8 limited if a third party engages in hostile integration  
9 for extractionally purposes?

10 A No, it's much higher.

11 Q I'm going to briefly, in the interests of time,  
12 touch on the SecurityFirst initiative. Specifically if  
13 you could turn to Exhibit 27 in your binder. That's the  
14 SecurityFirst overview.

15 MS. MILLER: Your Honor, this is defendants'  
16 Exhibit 27, which I would move to be admitted into  
17 evidence.

18 THE COURT: Any objection?

19 MR. MILLER: No, Your Honor.

20 THE COURT: It's admitted.

21 MS. MILLER: Thank you.

22 BY MS. MILLER:

23 Q And again in the interests of time, Mr. Thorne, and  
24 to the Court's question, was the SecurityFirst program  
25 just about prohibiting third-party access?

1 A Not at all.

2 Q What was it about?

3 A It was a comprehensive program that had essentially  
4 four pillars to it. The first was educating the market  
5 on security and the right measures and procedures to take  
6 to ensure security. Giving them full transparency about  
7 the program and everything associated with it. And we  
8 took that very seriously. We invested more than seven  
9 figures in the education awareness when we launched the  
10 program.

11 The second thing is we made massive security  
12 enhancements to our ecosystem and to our environment.  
13 I've talked about real-time integration. We deployed  
14 SSO. We had moved all our clients to end a multiyear  
15 effort to get them on a single version of software.

16 THE COURT: What's SSO?

17 THE WITNESS: Single sign-on. We also  
18 implemented SSL technology in our business. We  
19 implemented specific security architects inside our  
20 product development teams. We made hundreds of millions  
21 of dollars of investments in infrastructure and detection  
22 technology in our hosting environment. We built hostile  
23 access detection and interrogation mechanisms. So  
24 massive security investments.

25 We also revised the entire 3PA Program. And that

1 revision wasn't just about hostile access, it was about a  
2 level-playing field for all the vendors in the  
3 marketplace, large or small. It was about standardized  
4 pricing. Part of the strategy was to dramatically  
5 increase access to the CDK ecosystem. So when I took  
6 this job, there was only access to the DMS. We quickly  
7 added integration to our credit application platform. We  
8 added integration to our desking product, which is a  
9 product where we key in all the lease and finance rates  
10 and programs every single day for dealers. And then  
11 we're currently working on integration to our CRM  
12 application and to our service-edge products which are  
13 our service workflow applications. So we've expanded the  
14 number of integration points and the number of products  
15 that are included with this.

16 We also released our digital 3PA Program which  
17 provides the marketplace with complete access to our very  
18 vast and extensive digital marketing ecosystem, and in  
19 fact, we have over 200 vendors that are in the process of  
20 signing up for that ecosystem. So there was a whole  
21 standardization of pricing. There was a standardizing of  
22 terms; us capturing the value, but then massively opening  
23 up the ecosystem to broader participation.

24 And then the last component was DDX; right? So  
25 creating the transparency, the accountability back to our

1 dealer, the back to our dealer base, back to our OEM  
2 partners, that they could see all of the data --

3 THE COURT: Okay. I don't mean to cut you off,  
4 but I think we've covered it. It was not just about  
5 stopping hostile access.

6 BY MS. MILLER:

7 Q In shutting down hostile integration, does CDK  
8 prevent dealers from extracting their data and sharing it  
9 with third parties?

10 A No, we don't.

11 Q Is it particularly different to do so?

12 A No, it's not.

13 Q Yesterday the Court asked a question as to whether  
14 or not the dealers are already paying the costs imposed  
15 on CDK as a result of hostile integration. I responded  
16 to that question, but I'd like the Court to hear it from  
17 you. Are those costs part of the costs that you already  
18 charge dealers for their DMS access?

19 A No, they're not.

20 Q Why not?

21 A There are substantial costs when you have hostile  
22 integration. You have system performance issues that you  
23 have to pay for. And when there's a system performance  
24 issue, we're the ones that get the phone call to say my  
25 system is slow, something is going on. We have to go

1 through an extensive detection mechanism. When somebody  
2 extracts data out of the DMS and then ships it off to  
3 dozens, potentially hundreds of providers, when those  
4 providers get that data and start using that data, they  
5 more often than not have significant questions on the  
6 data. And if they have a question on the data, they call  
7 the dealer, the dealer calls CDK, and we have to burden  
8 all of that support cost.

9 The second -- the other issue is that when these  
10 hostile integrations are pulling data out, they describe  
11 this process as being batch. Well, the problem with  
12 batch is that you, on a Monday morning, extract a whole  
13 bunch of data out of the DMS; okay? And a service  
14 reminder company gets that data on Monday night and then  
15 they take a little bit of work, and on Tuesday, they send  
16 out a huge market email. Well, little do they know that  
17 a whole bunch of that information on Monday changed in  
18 the DMS. Malcolm no longer owns that car. Well, all of  
19 those data integrity issues that are a result of whatever  
20 that business happens to be doing, and there are hundreds  
21 of thousands of potential applications across the  
22 industry, every single error based on the timing of that  
23 data comes back to a CDK call center case. Why did this  
24 user get this service reminder? Why did this happen? We  
25 bear that cost. So --

1 Q Mr. Thorne, two last quick questions, if I may. Is  
2 a DMS space competitive?

3 A Very competitive.

4 Q Is CDK losing some customers and gaining others?

5 A Yes.

6 Q Does it consider DealerTrack to be a competitor?

7 A Very viable competitor.

8 Q Reynolds?

9 A Yes, very viable.

10 Q Advent?

11 A Yes.

12 Q Any others? I'm running out of --

13 A Auto/Mate, Autosoft, DealerBuilt. There's many  
14 competitors in the DMS space.

15 MS. MILLER: Thank you, sir. I pass the  
16 witness. (4:20 p.m.)

17 THE COURT: All right. Cross-examination.

18 CROSS-EXAMINATION

19 BY MR. MILLER:

20 Q Good afternoon, Mr. Thorne. Kevin Miller on behalf  
21 of Authenticom. So you testified earlier that part of  
22 the rationale for the 3PA refresh was a profit motive for  
23 CDK; correct.

24 A That is correct.

25 Q And in fact, one way of increasing profits would be

1 for CDK to raise integration prices for vendors; correct?

2 A That is correct.

3 Q In fact, the Judge asked you some questions earlier  
4 wouldn't it be helpful to get rid of lower-priced  
5 third-party integrators as part of the program. Do you  
6 recall those questions?

7 A I recall that question, yes.

8 Q In fact, the 3PA refresh strategy recognized that  
9 CDK should be prepared for issues arising from increased  
10 pricing for existing vendors, didn't it?

11 A Can you restate the question?

12 Q Sure. The 3PA refresh strategy recognized that CDK  
13 should be prepared for issues arising from increased  
14 pricing for existing vendors.

15 A That is correct. We anticipated that we would have  
16 some dealer reaction related to our increased prices.

17 Q And the risk was that vendors would be willing to  
18 move to what you referred to as hostile means instead of  
19 accept the increased price, especially if the DMS was not  
20 secure.

21 A I have no idea what the vendor risk would be. The  
22 dealer risk is that we would lose our customers.

23 Q Can you pull up Defendants' Exhibit 31, page 14.  
24 This is in your binder.

25 A Exhibit 31.

1 Q Yes. Slide 14. I think if you have the Bates  
2 labels, it's CDK 1052 at the bottom there.

3 A 1052?

4 Q Correct.

5 A The page is labeled *Conversion Strategy*?

6 Q Yes. And as part of the conversion strategy, No. 5  
7 here is what we talked about a moment ago. "CDK should  
8 be prepared for issues arising from increased pricing for  
9 existing vendors"; correct? Do you see that?

10 A That's correct.

11 Q And then No. 6 says "There's a risk of vendors  
12 willing to move to hostile means instead of accept  
13 increase price, especially if DMS not secure." Do you  
14 see that?

15 A Yes. You read that correctly.

16 Q So in other words, CDK was concerned that if it  
17 raised prices on vendors, the vendors would switch to  
18 independent integrators and access the dealers' data that  
19 way; right?

20 A Yes. There's a potential risk that vendors would  
21 switch.

22 Q But if CDK could lock down its DMS and be the  
23 exclusive integration provider, then it could raise  
24 prices without worrying about price competition from  
25 independent integrators; right?

1 A Locking down the DMS had nothing to do about raising  
2 the price. Locking down had to do with the fact that  
3 people were hostilely accessing our system and causing  
4 all the issues that have been outlined in some of the  
5 previous documents provided.

6 Q No. 6 specifically refers to price as a reason to  
7 secure the DMS, doesn't it?

8 A No. 6 explicitly says that there is a risk that some  
9 vendors may choose to move to a hostile provider if there  
10 is an increase in price.

11 Q If the DMS is not secure; correct?

12 A Yes.

13 Q And you testified earlier also about not wanting  
14 integration fees to be included on invoices and -- you  
15 recall that testimony?

16 A Correct.

17 Q CDK knew that much or all of the increase in  
18 integration fees to vendors would, in fact, be passed on  
19 to dealers; correct?

20 A No, we did not.

21 Q Well, if you look at No. 4 on the slide, we see that  
22 the rollout should be designed to create minimal  
23 awareness to the dealer. Do you see that right?

24 A Just put this in context. You are looking at "Next  
25 steps for DMS vendor. This is a conversion strategy for

1 next steps for DMS vendor." Let's put this document in  
2 context because -- so we're talking about, first of all,  
3 DMS vendor strategy, the approach to DMS providers.  
4 We're talking about the conversion strategy. And what we  
5 are saying here is that we want to essentially minimize  
6 the disruption to dealers that are in this specific  
7 situation.

8 Q Well, but in order for the refresh strategy to work,  
9 CDK needed to keep dealers in the dark about the massive  
10 increased fees it intended to impose for integration;  
11 right?

12 A I don't read that in the paragraph.

13 Q Well, that's exactly why the 3PA refresh strategy  
14 included the restriction that the vendor would be  
15 required not to disclose its pricing; right?

16 A That's completely false.

17 Q Let's turn to -- it's Exhibit -- defendants' Exhibit  
18 24 at page 103. You should have that in your binder as  
19 well. Are you with me?

20 A I'm with you. I'm on page 24. It's 1062; correct?

21 Q I'm sorry. It's in Exhibit 24. I changed tabs on  
22 you. I apologize.

23 A Exhibit 24. Page?

24 Q Page 28, which is CDK 13. I'm sorry.

25 THE COURT: Page 103.

1 Q Page 103. CDK 888?

2 A Is that a final?

3 Q That is my final --

4 THE COURT: Do you know what a Bates number is?

5 THE WITNESS: No. Is that the bottom right-hand  
6 number?

7 THE COURT: You're a lucky man. Just look where  
8 it says page 103.

9 THE WITNESS: Okay. 103.

10 THE COURT: Yes.

11 BY MR. MILLER:

12 Q Are you with me?

13 A No, I'm not. We're in 24.

14 Q 24, page 103. And if you look at the very bottom,  
15 it's CDK that ends in 888. The top of the page says  
16 *Contract Changes.*

17 A All right.

18 Q It's on the screen --

19 A I'm here.

20 Q -- if it will help you.

21 A I'm here.

22 Q Okay. And do you see that the ultimate bullet point  
23 there says that "The vendor is required not to disclose  
24 pricing. In place February 2015."

25 A I see it.

1 Q The 3PA -- you can turn that aside. The 3PA refresh  
2 also provided an opportunity for CDK to increase the  
3 market share and profitability of its own applications;  
4 right?

5 A I don't know how you draw that conclusion.

6 Q Well, you were here earlier. You heard Mr. Schaefer  
7 say that Reynolds wasn't interested in protecting its own  
8 layered apps by shutting down competing applications? Do  
9 you remember that testimony?

10 A Not the exact wording of it, no.

11 Q But CDK is shutting down competing apps as part of  
12 the refresh; correct?

13 A We are shutting down competing apps. I'm not aware  
14 of what -- maybe you can be specific.

15 Q Well, that was part of the refresh plan, wasn't it?

16 A No, it's not at all.

17 Q It was to protect the layered apps for CDK, wasn't  
18 it?

19 A No, not at all.

20 Q Can you pull up defendants' Exhibit 24 at CDK 813,  
21 page 28. That's in your Exhibit 24. Are you with me,  
22 Mr. Thorne? Page 28. You can also look at the screen.

23 A Yes, I'm here.

24 Q We're trying to pull the full screen up there for  
25 you if it's easier.

1 A Okay. I'm here.

2 Q On the right-hand side about halfway down under CDK,  
3 do you see the bullet point that says "Keep value add  
4 advantage to CDK-layered applications"?

5 A I do.

6 Q Do you also see "Protect margin of layered apps if  
7 dealers chooses not to use CDK"?

8 A I do. So it's something you should bear in mind,  
9 this is a work-in-process strategy. When we started out  
10 in this strategy process, we went through multiple  
11 iterations, and in fact, we debated at the beginning of  
12 this process which applications would be concluded and  
13 which categories would be created. And in fact, when we  
14 got towards the end of this process, we opened many  
15 categories and many applications that we debated at the  
16 beginning of the process are possibly being closed and  
17 not open. Example is CVR. An example is service  
18 workflow in applications like XTime. So I just want to  
19 make sure you take this document in context. This is not  
20 a final document. It was not published strategy. It is  
21 a work-in-process that reflects the thoughts that were  
22 going here during that process.

23 Q But the draft we're looking at here or the document  
24 we're looking at here is the later document, the December  
25 2014 one I think you cite in your declaration.

1 A Correct. And the program was launched in July of  
2 2015.

3 Q And you said this was not published. This was just  
4 for internal purposes; correct?

5 A Correct.

6 Q You didn't -- you didn't publish these goals or  
7 strategies to the public; correct?

8 A What is your definition of publish? We discussed  
9 certain parts of this strategy with our clients, with  
10 NADA, with the dealer base.

11 Q Let me have you turn in the same document to page 33  
12 of Exhibit 24, and if it's easier we'll also have it up  
13 on the screen. If you see Item No. 1: "One of the 3PA  
14 Program's principles was to protect CDK products through  
15 a tilt-the-table approach." Do you see that?

16 A Where are we?

17 Q No. 1. It's on the screen right next to you.

18 A Yep. So there are certain intellectual property --  
19 we're quite open about this. So there are certain  
20 intellectual property that we believe belongs to the DMS  
21 company. So we have spent over a billion dollars  
22 building a service workflow application. We believe that  
23 a repair order creation is something that is specific.  
24 It's intellectual property that we are not willing to  
25 license to the marketplace.

1 Q And one of your goals stated here, you use the order  
2 example, one of your goals for the 3PA Program was to  
3 disrupt the workflow; correct?

4 A Dealers only, pushed and pending must be finalized  
5 in CDK F&I all to dispute workflow -- dealers only,  
6 pushed and pending -- so there is only one vendor that I  
7 am aware on -- there's only one vendor in the marketplace  
8 that would ever even have the capability of not pushing a  
9 pending deal. So I'm not exactly sure what this is  
10 referring to. Every CRM desking vendor we have, of which  
11 there are dozens, would push a dealer in a pending  
12 status. So I'm not really sure what this goal to disrupt  
13 workflow relative to finalizing a deal in F&I.

14 Q You testified earlier also, I think the phrase you  
15 said is you wanted to level the playing field as part of  
16 the refresh program. Do you remember testifying about  
17 that?

18 A That is correct.

19 Q But, in fact, CDK did not want there to be a level  
20 or fair playing field between its applications and those  
21 offered by competing software vendors who might seek to  
22 be certified on 3PA; right?

23 A There are certain areas that we deem as are  
24 significant enough intellectual property that we're not  
25 going to license to third parties.

1 Q In fact, this is what CDK -- the next slide if you  
2 look at page 34. But it's on the screen. That's what  
3 CDK, in fact, wanted the playing field to look like for  
4 competing applications; correct?

5 A Well, by nature CDK products that run in our  
6 environment have access to our system; are going to have  
7 better integration to the marketplace than third-party  
8 applications.

9 Q I want to go back to some of the answers you gave  
10 earlier or the documents you were shown earlier about  
11 security. I'd like to move through those fairly quickly.  
12 If we could go first to Exhibit 21, which was the ADP  
13 Information Security Guidelines. I think you were asked  
14 to look at page 13, so I'm going to direct you to that  
15 same page, which is CDK 764.

16 A I'm on page 13.

17 Q And the first full paragraph there, there's a  
18 sentence --

19 MR. MILLER: If you could blow it up, Steve.

20 Q -- that says "Third parties should always have  
21 unique IDs and be required to authenticate to the system  
22 before they can access the data." Do you see that?

23 A Yep.

24 Q So as long as Authenticom follows that practice, ADP  
25 is okay with that approach to third-party integration;

1 correct?

2 A No, they're not for all the other reasons we've  
3 discussed today.

4 Q You were also asked about Exhibit 25, which was the  
5 PwC GSO threat and security assessment. Do you recall  
6 that?

7 A I do.

8 Q And first of all, this agreement was dated after the  
9 wind down or this document was dated after the wind-down  
10 agreement that we've been talking about. You've heard  
11 testimony about some today; correct?

12 A I don't recall the wind-down agreement; so...

13 Q Do you recall that it was February of 2015, the  
14 agreement between CDK and Reynolds?

15 A Okay. Yes.

16 Q Okay. The record I think is fairly clear. I'll  
17 move on. If you could turn to page 40, which is CDK 945  
18 of this document. The top page is *Identity and Access*  
19 *Management* and then there's some observations and  
20 recommendations.

21 A It's CDK 9 -- I'm sorry -- 45?

22 Q 945.

23 A Okay. I have that.

24 Q Nowhere in this PwC report commends or mentions  
25 issues with third-party integrations, does it?

1 A I'd have to be -- nowhere in where? Sorry.

2 Q Well, I won't make you read the document. But are  
3 you aware -- you testified about the document earlier.  
4 Are you aware of any conclusions in here reached about  
5 third-party integrators?

6 A I'm not aware -- in this conclusion section, I don't  
7 believe there is specific mention of specifically  
8 third-party hostile integrators.

9 Q And certainly you don't mention about that in --

10 A I don't recall mention of anything.

11 Q The last security question I want to ask you is on  
12 tab 26, which was the ADP data corruption review from  
13 August of 2013. There was a section on the very first  
14 page there about the sources of data corruption?

15 A Page -- sorry, where are you?

16 Q The very first page of tab 26.

17 A Okay. I'm here.

18 Q Are you with me? And again, Authenticom is not  
19 listed as a source of data corruption here; correct?

20 A No. This is not specifically about Authenticom.  
21 It's specifically about any hostile integrator.

22 Q But 3PA is actually listed as a source of data  
23 corruption; correct?

24 A 3PA could be -- at the time could have been a source  
25 of hostile integration.

1 Q And ADP is listed?

2 A Yes. It is possible that some legacy applications  
3 or integrations that have access to the DMS could have  
4 been.

5 Q Last topic, Mr. Thorne, because we're running a  
6 little late. You stated in your declaration that CDK  
7 wanted to achieve the goals of 3PA in collaboration with  
8 dealers, vendors and part-and-manufacture OEMs. Do you  
9 remember that?

10 A I do.

11 Q But for the CDK refresh strategy of locking down the  
12 DMS access to work, CDK also needed to reach agreements  
13 with competing DMS providers; right?

14 A We needed to sign -- if those vendors were going to  
15 likely stop using hostile access methods to try to access  
16 our DMS, we wanted them to come into the standard 3PA  
17 Program like everybody else.

18 Q I'd like to ask you to turn back to defendants'  
19 Exhibit 31, which I think your counsel showed you  
20 earlier, this particular slide, which was page 24, the  
21 DMS provider strategy. Are you with me?

22 A I'm here.

23 Q And Ms. Miller pointed to the second bullet point  
24 that the "Part of the DMS provider strategy was to gain  
25 reciprocal agreements with DMS providers that would help

1 CDK on multiple fronts." Do you see that?

2 A Yes.

3 Q So again, we weren't talking about DMS providers,  
4 we're talking about CDK's competitors; right?

5 A Yes.

6 Q And part of the reason you wanted to gain reciprocal  
7 agreements was to secure the CDK DMS through eliminating  
8 opportunities for key enablers of hostile integration;  
9 among those included Authenticom, right?

10 A As I have stated earlier, I mean there were a number  
11 of reasons. One was related to manufacture programs  
12 wanting access -- wanting us to provide services across  
13 the entire ecosystem. The second was we had our own  
14 suite of layered applications that we wanted access to  
15 their program --

16 THE COURT: Let's just answer the program.

17 Authenticom was one of the hostile integrators --

18 THE WITNESS: Yes.

19 THE COURT: -- that you were -- go on.

20 BY MR. MILLER:

21 Q So you agreed that CDK's goal was to enter into an  
22 agreement with its competitor to stop competing for data  
23 integration on each other's DMS; correct?

24 A No, I don't agree that it was to stop competing for  
25 data integration.

1 MR. MILLER: No further questions. (4:39 p.m.)

2 THE COURT: Any redirect?

3 MS. MILLER: Yes. One briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. MILLER:

6 Q Mr. Thorne, does CDK still compete in the field for  
7 integration services?

8 A Yes, we do.

9 MS. MILLER: Nothing else, Your Honor.

10 THE COURT: Okay. Thank you very much.

11 MS. MILLER: Something for the record or just  
12 for housekeeping, both Exhibit 24 and Exhibit 31 were  
13 designated as highly confidential given their strategic  
14 nature to the company. We'd ask that they not be in the  
15 public record.

16 THE COURT: Okay. That will be fine. Just for  
17 housekeeping purposes, nothing that's been submitted here  
18 is going to really be in the public record just because  
19 it got to me.

20 MS. MILLER: Fair enough.

21 THE COURT: If the discussion of -- the  
22 transcript at some point will become public and you'll  
23 have the chance to redact the transcript. I don't know  
24 if any of our discussion here involves the  
25 confidentiality concerns, but you'll get a chance to

1 redact the transcript. But the exhibits aren't going  
2 anywhere and they were designated highly confidential,  
3 filed under seal, and I'm going to keep them that way.

4 MS. MILLER: Appreciate that.

5 MR. HO: Your Honor, could we just get  
6 clarification? Obviously there are people in this room  
7 for whom the bell cannot really be unring.

8 THE COURT: Yeah, that's one of the things about  
9 doing an evidentiary hearing.

10 MR. HO: Right. So I just clarification that  
11 whatever confidentiality applies from here on out doesn't  
12 include people in this room.

13 THE COURT: Yeah. The things that have been  
14 discussed or shown, I mean that's -- you needed to tell  
15 it to me to base my decision on it so I'm going to do  
16 that. I'm not going to get nondisclosure agreements from  
17 everybody here in the courtroom. But I'm not going to  
18 unseal, for example, the documents that have been  
19 designated highly confidential filed under seal. I'm  
20 going to keep those that way. But I'm not putting a gag  
21 order on anybody about what has happened in this hearing.

22 MS. GULLEY: Your Honor, just to clarify,  
23 there's a protective order in this case and the parties  
24 are already bound by it.

25 THE COURT: Oh, they're still bound.

1 MS. GULLEY: And so if something is  
2 confidential, they can't just go use it for business  
3 purposes. I just want to make sure, to the extent the  
4 protective order protects the use of the confidential --

5 THE COURT: Everybody who is bound by the  
6 protective order is going to be bound by the protective  
7 order, even if they heard something in this courtroom.  
8 So they're still stuck with it. But I don't know who  
9 else is in the courtroom here. Apparently there's very  
10 limited recreational opportunities and they decide to --  
11 but I'm not going to try to gag all those people who  
12 aren't parties. But if you're bound by the protective  
13 order, you're bound by the protective order even though  
14 you attended this hearing.

15 MS. GULLEY: Thank you, Your Honor.

16 THE COURT: I don't know if we've even had our  
17 afternoon break, I don't remember. But we're just going  
18 to press on and get as much done as we can. So let's do  
19 another witness.

20 MR. RYAN: Your Honor, we call Howard Gardner.

21 **HOWARD GARDNER, DEFENDANTS' WITNESS, SWORN**

22 DIRECT EXAMINATION

23 BY MR. RYAN:

24 Q Would you state your name, please.

25 A Howard Gardner.

1 Q And where do you work, Mr. Gardner?

2 A I work at CDK Global.

3 Q What is your job?

4 A I am Vice President of Data Services, and my  
5 responsibilities include oversight of the Third Party  
6 Access Program.

7 Q And how long have you been responsible for oversight  
8 of the Third Party Access Program?

9 A About nine years.

10 Q Thank you.

11 MR. RYAN: Your Honor --

12 THE COURT: Yep. Bring them up.

13 MR. RYAN: This is Exhibit 186 which is in  
14 evidence. This was shown to Mr. Rosenbach and there were  
15 some -- I thought there might have been some questions  
16 for the Court about it.

17 THE COURT: Okay.

18 MR. RYAN: Do you have a copy of it?

19 THE COURT: I probably do, but it's easier for  
20 me to just grab this one than find the one I have.

21 BY MR. RYAN:

22 Q We're not going to go through it. If we could put  
23 186 up on the screen the first page. Do you have Exhibit  
24 186 in front of you, Mr. Gardner?

25 A Yes, I do.

1 Q Can you just tell us what that is, please?

2 A This is a sample report of a typical report that we  
3 would run that shows hostile activity on the CDK DMS.

4 Q And that's quite a lengthy report; correct?

5 A Correct. And we also would expose and show this to  
6 our dealers through our DDX tool that's been talked about  
7 earlier.

8 Q Is there a summary page in the report?

9 A There is. That's what I'm looking at now.

10 Q And can you briefly just walk us through the summary  
11 page and tell us what it shows.

12 A Sure. This is a summary report of 30 days of  
13 identified Authenticom activity on the CDK DMS. This  
14 would be hostile activity. If you see in cell B2, there  
15 are 542 servers are represented on this report. And then  
16 queries over the prior 30 days was 12.9 million queries  
17 across those 542 servers by Authenticom.

18 And then the bottom section is the top six dealers  
19 that showed hostile activity in the report. So for all  
20 Authenticom activity detected in that period of time,  
21 these are the top six in terms of actual activity.

22 THE COURT: And so the number of DMS servers,  
23 that's the number of DMS servers that had hostile  
24 activity.

25 THE WITNESS: That's the number that we were

HOWARD GARDNER - DIRECT

1 able to detect, yes.

2 THE COURT: And so what were the universe of all  
3 DMS servers in the CDK DMS system?

4 THE WITNESS: About 3,000.

5 THE COURT: Okay.

6 MR. RYAN: Your Honor, would you like any  
7 further explanation of this report?

8 THE COURT: I guess my fundamental question is  
9 is there a way of identifying what proportion of the  
10 system resources were devoted to the hostile activity?

11 THE WITNESS: I couldn't produce that today, but  
12 there would be a way to determine that.

13 THE COURT: Okay.

14 THE WITNESS: I mean I think it would be a good  
15 -- a way to establish a metric around that. It wouldn't  
16 be exact, but I think there would be a way to do that.  
17 We don't have it today.

18 THE COURT: And then if the hostile activity  
19 were eliminated, then these dealers would still want to  
20 get data and the vendors who are serving those dealers  
21 would still -- the dealers would want to get the data to  
22 the vendors and the vendors would still want to get it so  
23 that they could serve it through some other means other  
24 than the hostile means.

25 THE WITNESS: Presumably, yes.

1                   THE COURT: So what I really would also like to  
2 know is not only the percentage of resources that are  
3 devoted to the hostile activity, but what's the marginal  
4 impact of the hostility of this activity as opposed to  
5 using the data integration means that your company would  
6 find acceptable?

7                   THE WITNESS: Okay. Numbers would be hard to  
8 get to you today. Qualitatively one of the points in  
9 dispute is that the process of accessing a DMS through  
10 the user credentials as a user would results in data  
11 access using the tools available within the user account  
12 versus direct calls to the database, which is what we  
13 would use in our Third Party Access Program.

14                  THE COURT: And those direct calls would be more  
15 powerful and more efficient.

16                  THE WITNESS: More powerful and more efficient;  
17 correct. The other point to raise here is that the tools  
18 that are available to the dealers are very powerful.  
19 They have very broad access. They can get to --

20                  THE COURT: Powerful in a different sense  
21 though.

22                  THE WITNESS: In terms of the tools available to  
23 get to the data. They are powerful and they do have some  
24 constraints, but they don't have a lot of constraints  
25 built around them because the presumption is that they're

1 used for dealers. The other -- point I want to make here  
2 is that this is called English. I think we talked about  
3 this. This is an English-scripting language that's used  
4 in the database.

5 THE COURT: Yeah. I think we heard that from  
6 the IT guy from California.

7 THE WITNESS: Right. So we're going to get to  
8 the limits of my knowledge on that pretty quick here.  
9 But my understanding of English is that -- first, I know  
10 it's a scripting language. But it's also a very powerful  
11 language, so you can do a lot with it. You can slice and  
12 dice; state in a different ways. You can pull large sets  
13 of data. You can write scripts that produce smaller sets  
14 of data. But it's also something that requires a fair  
15 amount of skill. So to use it well, you need to be  
16 knowledgeable in the use of that English Query language  
17 so that you can produce efficient queries. And if you  
18 produce them efficiently, then you might get good  
19 results; not as much burden on the system. But if you're  
20 not as well equipped to use the tools, then you might get  
21 very inefficient results which could, you know, cause  
22 extra burden on the dealership.

23 The other point is the volume of access is then  
24 restrained so you can run -- you can understand it  
25 without constraint. You can continue to run queries.

1 And there are cases where -- when we talked about  
2 real-time earlier -- there are cases where vendors have  
3 attempted to use this technique to simulate real-time; in  
4 other words, they're getting data very rapidly.

5 THE COURT: It's still a batch approach, but you  
6 get the batch --

7 THE WITNESS: You're getting -- you're trying to  
8 hit the system as fast as you can to get data out so you  
9 can produce reports that show real-time status. So that  
10 would be a typical case where you would see that, where  
11 they're trying to run a report to show dashboards in the  
12 dealership of real-time access, where real-time is  
13 happening.

14 THE COURT: But the point of that is that you'd  
15 have to have an awful lot of these English-scripted  
16 queries to try to emulate real-time process.

17 THE WITNESS: Correct. And if you had any  
18 number of third parties, then you have that starting to  
19 multiply. So you could have a very huge volume of  
20 accesses that are unconstrained and without, you know,  
21 the ability to detect and audit what's happening, what  
22 data is moving, where it's going, those kinds of things.  
23 The transparency and accountability principles tend to  
24 get disrupted by that.

25 THE COURT: I think this is my last question

1 about it, but I think the implication has been that this  
2 report is a typical periodic report of hostile activity.  
3 But I think the implication that I've had is this is all  
4 Authenticom in this stack.

5 THE WITNESS: That's correct.

6 THE COURT: So explain that to me. This isn't  
7 just, like, here is the June 6th report for -- of hostile  
8 activity over the last 30 days. This is some special set  
9 of reports of the inquiries that you think are from  
10 Authenticom.

11 THE WITNESS: That's correct.

12 THE COURT: So do you have some other report on  
13 the nonAuthenticom hostile activity?

14 THE WITNESS: Well, we have -- yes. So this is  
15 a sample, as I said -- let me start over -- of the data  
16 that's focused on Authenticom. And for every hostile  
17 activity that we can identify, we have that information  
18 as well. So -- and if you look in our DDX tool, I don't  
19 know if we have that here, but we produce reports that  
20 the dealers can see any time they wish and they can see  
21 everything that we can tell them about data access to  
22 their system. And that's one of the really powerful  
23 things of the Third Party Access Program is we can do  
24 that. And it shows them all the data connectivity that  
25 we manage.

1           So if we're -- we manage connections to the OEMs, to  
2 the car companies related to sales and parts,  
3 transactions and things of that type. And we manage all  
4 of their connections through the Third Party Access  
5 Program. And any other connection that we're managing,  
6 we show them that. And then we do our best to show them  
7 access that is not approved. So we would call this  
8 unauthorized unapproved integration.

9           THE COURT: So how do you use this report then  
10 because -- I do have one more question: How do you use  
11 this report? Is this, like, you want to call up  
12 Bergstrom. I assume that's the Bergstrom Automotive  
13 Group here in Wisconsin?

14           THE WITNESS: Right.

15           THE COURT: You're going to call up  
16 Mr. Bergstrom and scold him about how much unauthorized  
17 use --

18           THE WITNESS: I don't know scold. I don't know  
19 if we would scold him, but we might very well call him if  
20 we have a team that is receiving calls from dealers and  
21 explaining to them their report. And we've done  
22 outreaches to dealers to do that. So it's been something  
23 that we've used to inform dealers and tell them that  
24 we're here to help you address these issues if you'd  
25 like.

1                   THE COURT: And he says I really like  
2 Authenticom.

3                   THE WITNESS: Well, we would tell him that  
4 Authenticom is not an authorized provider of integration  
5 services.

6                   THE COURT: All right. Okay. Thank you.

7 BY MR. RYAN:

8 Q                During your time as head of the CDK 3PA Program,  
9 were you ever a hostile integrator at Reynolds?

10 A               I'm sorry. Was I?

11 Q               Was CDK.

12 A               Yes. So that was as DMI. So you've heard, Your  
13 Honor, DMI, IntegraLink, so that would be that activity.

14 Q               And just directing your attention generally to  
15 2013/2014, what was happening in terms of your hostile  
16 integration at Reynolds?

17 A               Well, if we go back to 2009, that was referred to  
18 earlier, yesterday I believe, there was a progressive  
19 effort by Reynolds and Reynolds to secure their DMS, and  
20 they started small and worked hard to do that more  
21 capably over time. And between -- I joined in 2008, so  
22 between 2008 and 2013/2014 Reynolds had effectively  
23 secured their DMS. So it was very difficult to reliably  
24 access data in the Reynolds DMS as a hostile integrator.

25                   So the result of that was we were unable to serve

1 our clients. It was very difficult time in terms of  
2 running a business. We couldn't provide the data that  
3 our clients needed to run their applications. And we  
4 determined that there was inevitability about what was  
5 happening that the system would close and it would be an  
6 impossibility to continue to remain in business as a  
7 Reynolds hostile integrator. So it was -- that's  
8 essentially where we were.

9 Q And was a decision ultimately made to end hostile  
10 integration?

11 A Yes. That led to a decision to exit Reynolds'  
12 hostile integration as a business.

13 Q And other than what you've described as Reynolds'  
14 efforts to -- successful efforts to block CDK's hostile  
15 integration and the impact on your dealer customers, were  
16 there other reasons that CDK was going to exit hostile  
17 integration?

18 A Yes. So we heard about SecurityFirst and the  
19 strategy to make security the centerpiece of our  
20 marketing approach going forward. We felt we were behind  
21 the curve from a business perspective and that we needed  
22 to take a stronger position on security in general. So  
23 the practice of being a hostile integrator was not  
24 consistent with being a leader in security in our view.  
25 So there was that.

1           And then, you know, some of the methods that you  
2 have to use to be a hostile integrator become more and  
3 more distasteful over time. So there are things you have  
4 to do that, like soliciting usernames and passwords and  
5 finding clever ways to get around security mechanisms  
6 that are often there for a very good reason, and it was  
7 just not something that was in keeping with what I wanted  
8 to do. It was just not a good -- didn't feel good to do  
9 it.

10 Q       Can we have Exhibit 1 up, defense Exhibit 1.

11           MR. RYAN: This is the wind-down agreement, Your  
12 Honor, in evidence. Can I hand him a copy?

13           THE COURT: Yes.

14 BY MR. RYAN:

15 Q       Are you familiar with Exhibit 1?

16 A       Yes, I am.

17 Q       And what is it?

18 A       This is -- it's the data exchange agreement. This  
19 is the result of the decision that CDK made to exit the  
20 hostile integration business with respect to Reynolds.

21 Q       And do you recall what the wind-down period was?

22 A       The wind-down period was as long as it -- this is my  
23 recollection without rereading it -- was the duration of  
24 the client. There was a wind-down period defined for  
25 each individual client. And as each client was wound

1 down to either -- you know, to whatever service they  
2 wanted to move to, including Reynolds, then that was --  
3 that was the end of the wind down when the last client  
4 moved off of the protected integration that Reynolds was  
5 providing.

6 THE COURT: And the clients are the vendors?

7 THE WITNESS: Yes. The clients are the vendors.

8 BY MR. RYAN:

9 Q Were there other agreements that were negotiated --

10 A Yes.

11 Q -- in conjunction with the wind-down agreement?

12 A Yes. There were two others referenced here. Both  
13 -- one was a Reynolds RCI agreement for certain CDK  
14 applications to join the RCI program and there was an  
15 agreement that covered certain Reynolds applications that  
16 Reynolds wanted to have part of the 3PA Program.

17 Q And could you turn to page three of the wind-down  
18 agreement, and specifically Section 4.1 for me.

19 A Um-hmm.

20 Q Do you see that?

21 A Yes.

22 Q And then in the middle of that section it says  
23 "During the wind-down period, Reynolds and CDK shall  
24 discuss in good faith the technical and operational  
25 aspects of the wind-down period as they relate to the

1 ongoing servicing by DMI, DMI third-party clients, and  
2 their transition to the Reynolds RCI program after the  
3 wind-down period." Do you see that?

4 A Yes.

5 Q I don't think we've heard anything on this, but the  
6 reference there to technical and operational aspects of  
7 the wind down, could you briefly describe for us what  
8 that entailed? What's going on there?

9 A Yeah. So that, I think, refers primarily to what  
10 Mr. Schaefer was talking about, the protected ID process;  
11 that it was important to establish a user account that  
12 they could specifically identify as being used by DMI or  
13 IntegraLink, and DMI is the broader reference here, to  
14 continue to provide service during the wind-down period.  
15 So they would protect that, white list it in other words,  
16 and it would continue to operate so we could continue to  
17 serve the client without disruption.

18 Q So there was a certain amount of cooperation in the  
19 wind down that was required between CDK and Reynolds; is  
20 that fair?

21 A Yes. To make sure that the client was able to  
22 continue to function during the wind-down period.

23 Q And this is again, as the Court said, the vendors?

24 A Yes, I'm sorry.

25 Q No. No need to apologize.

1 A Vendor and client in this case I'm using  
2 synonymously.

3 Q And could you go to page 10 of the document, please.  
4 And Section 11.3. Do you see that?

5 A Yes.

6 Q And toward the end there's a reference, a  
7 representation that "Each party has had an opportunity to  
8 review this agreement with counsel of its choosing." Do  
9 you see that?

10 A Yes.

11 Q Would it be fair to say that CDK had lawyers  
12 involved in the drafting of this agreement?

13 A Yes. Extensively.

14 Q And could you also go to Section -- page five,  
15 Section 6. Do you see that?

16 A Yes.

17 Q And 6.1?

18 A Yes.

19 Q And this refers to three sets of obligations that  
20 survive the expiration of the wind-down period; correct?

21 A Correct.

22 Q One is -- we'll go backwards. One is  
23 confidentiality; right?

24 A Yes.

25 Q One is privacy compliance; correct?

1 A Yes.

2 Q And the other is prohibition on knowledge transfer  
3 and DMS access; correct?

4 A Yes.

5 Q And then if we go to Section 4.5 on page four, that  
6 is prohibition on knowledge transfer and DMS access. See  
7 that?

8 A Yes.

9 Q And we'll cut to the chase. You've been looking at  
10 this agreement in preparation for your testimony;  
11 correct?

12 A Correct.

13 Q Can you just tell the Court how you interpret 4.5?

14 A So what I think this is saying is that CDK is not  
15 permitted to provide knowledge or technology or I think  
16 business processes to a third-party who might endeavor to  
17 access the Reynolds DMS and its reciprocal to CDK as  
18 well. So that both are not permitted to do that.

19 THE COURT: Is there any restriction on, not  
20 only not helping third parties -- well, I guess who  
21 includes -- in other words, you're not going to -- CDK is  
22 agreeing it's not going to help Authenticom.

23 THE WITNESS: Or any other party who endeavors  
24 to find its way into the ranks.

25 THE COURT: What about CDK itself?

1                   THE WITNESS: I believe that this says that CDK  
2 can continue to access the DMS.

3                   THE COURT: That --

4                   THE WITNESS: That CDK isn't restricted. That's  
5 my interpretation.

6                   THE COURT: Well, the agreement itself allows  
7 you to use DMI to access Reynolds.

8                   THE WITNESS: For certain -- for certain  
9 vendors, yes.

10                  THE COURT: And then after that -- apart from  
11 that and after that, you think the agreement still would  
12 allow CDK, say, to change its mind and say you know what?  
13 The whole security thing is really not working out for  
14 us.

15                  Let me put it in a little more plausible -- a closed  
16 system isn't working out for us. We really need to have  
17 open systems in this industry and so we're going back to  
18 being a hostile integrator.

19                  THE WITNESS: Yeah. So --

20                  THE COURT: Could you do that without violating  
21 the affirmative agreement?

22                  THE WITNESS: I don't see anything in here that  
23 would prevent that. So no, I think it would be  
24 permitted.

25                  MR. RYAN: Can I follow up on the Court's

1 question though, please.

2 BY MR. RYAN:

3 Q By the time that this agreement was signed in  
4 February of 2015, as the head of the 3PA Program for  
5 several years at CDK, what was your understanding of the  
6 likelihood that CDK was ever going to go back to hostile  
7 integration at Reynolds? That's really what I was  
8 referring to earlier is that from my point of view, it  
9 was not -- it was a distasteful business. I didn't want  
10 to continue to do it. And that wasn't a discovery in  
11 2015, that was an evolution, a feeling about the  
12 processes we had to go through. And it was just not --  
13 talk about getting employees to do hard things when they  
14 call a dealer and the dealer says I don't want to share  
15 that credential with you because it's against my MSA or  
16 I'm not allowed to do that anymore. Or you had a partner  
17 in 3PA or a potential partner in 3PA say to us you're  
18 telling me that if I'm a 3PA, I can't use Authenticom;  
19 right? You're telling me I have to use your service.  
20 But you're doing it. You're doing the same thing that  
21 Authenticom is doing. So you're not being consistent.  
22 Your house isn't clean. So part of this was getting our  
23 house clean. If we're going to go down the path, which  
24 we were, of being -- taking a security leadership  
25 position, the goal was to try and be better at Reynolds

1 but nicer than Reynolds. Sorry, guys.

2 THE COURT: Let me ask you this: I've heard a  
3 lot in the last couple of days about how dealers always  
4 felt like the data was theirs and they ought to be  
5 entitled to give their login credentials to Authenticom  
6 so that they could get their own data. Now you're  
7 suggesting that you had to do this distasteful thing of  
8 twisting the arms of the dealers to get them to give up  
9 their credentials so that you could do hostile  
10 integration. I thought, based on what I've heard so far,  
11 dealers were only too happy to give those credentials to  
12 third parties.

13 THE WITNESS: Not always. So many dealers are.  
14 It's a shrinking number because the industry has been  
15 talking about this for five, six years. This hit the  
16 mainstream in probably 2012. There were a lot of  
17 industry observers writing articles about this whole  
18 situation: Data access, hostile access and where would  
19 it go. And a lot of information about what does it mean.  
20 So in the dealer world you're at risk.

21 NADA issued their letter in, I think it was 2013,  
22 September of 2013, and that really created a firestorm of  
23 concern in dealerships. One of the things that happened  
24 is that they -- dealers started calling and saying I  
25 don't know where my data is going. You're CDK and you've

1 got this thing called DMI and you've got this 3PA thing  
2 and I want to know where my data is going. And so we'd  
3 send them the reports. But they'd say I've got other  
4 vendors that I'm sending data too. Where are they on  
5 this report? We'd say I can't tell you. I don't know.  
6 That's because you're giving credentials to a third  
7 party. So I can't account for that for you. I can't  
8 tell you what they're doing with it. So that was -- that  
9 was the big moment.

10 THE COURT: But that clearly isn't the issue  
11 with Authenticom because they've got the best platform,  
12 that I've heard about in this case, to tell the dealers  
13 exactly where their data is going.

14 THE WITNESS: Well, I would contest that. I  
15 think our --

16 THE COURT: You've got DDX.

17 THE WITNESS: Yeah. We've got DDX. And I think  
18 our reporting is more comprehensive and more useful to  
19 what the dealer really wants to do.

20 THE COURT: Maybe it is better, but the idea of  
21 somebody calling up and saying hey, I'm using  
22 Authenticom's DealerVault and I don't know where my data  
23 is going, that's implausible.

24 THE WITNESS: I think in that case that's true.  
25 Authenticom, my guess, is they are doing a good job

1 explaining where the data is going. I don't think  
2 they're missing it.

3 MR. RYAN: Thank you, Your Honor.

4 BY MR. RYAN:

5 Q When the 3PA -- when was the 3PA refresh officially  
6 rolled out?

7 A July 2015.

8 Q And at that time, about how many vendors were in the  
9 3PA Program?

10 A About 110, I think, is in my declaration.

11 Q And how many vendors are in the 3PA Program today?

12 A More than twice that: 220, 250, in that range.

13 Q And now can I --

14 MR. RYAN: Can I ask that defendants' Exhibit 41  
15 be put up on the screen, please. If I can hand the  
16 witness a copy, Your Honor.

17 THE COURT: Sure.

18 BY MR. RYAN:

19 Q So if you could take a look at defendants' Exhibit  
20 41, Mr. Gardner, and we're not going to spend much time  
21 on this. But can you just tell me what we've got here?

22 A Yes. This is -- it begins with an email from  
23 Stephanie at Authenticom advising a dealer that their  
24 profile -- that DealerVault is using an account in other  
25 words -- has been disabled and that they're proposing

1 creating a new profile so that DealerVault will continue  
2 to work, and if it's interesting to the dealer that they  
3 would -- Authenticom would offer a new tool that would  
4 automatically re-enable the accounts on an hourly basis.  
5 And they would be using a tool that's based on a function  
6 called UUP in the DMS, which is a function called Update  
7 User Profile, which happens to have enormous power.  
8 Because it can, once in your hands, you can add accounts,  
9 you did delete accounts, you can increase permissions.  
10 It's the keys to the kingdom virtually in terms of user  
11 access. So the dealer is saying --

12 Q The dealer is who?

13 A The dealer is Healey Brothers.

14 Q It's on the front page of the document.

15 A The dealer is sending this to --

16 Q Hang on just a second. Go to the next page. So  
17 who's the dealer on this document? If we can blow this  
18 up.

19 A The dealer is Healey Brothers, and it's being sent  
20 by Brad Warren, Director of Technology. And he's saying  
21 "Jeff" -- Jeff Barr is our Product Director for DDX --  
22 "This company is out of control now. They're offering a  
23 tool to run a script and re-enable their profiles ever  
24 hour." So obviously a dealer very concerned about this  
25 particular situation.

1 Q Thank you.

2 MR. RYAN: I'd like to move defendants' Exhibit  
3 41.

4 THE COURT: Any objection?

5 MR. NEMELKA: No.

6 THE COURT: Okay. It's admitted.

7 MR. RYAN: Thank you, Mr. Gardner. You have to  
8 stay, but I'm done with questions.

9 THE COURT: He's grateful, but you're not done.  
10 Okay. Cross-examination.

11 CROSS-EXAMINATION

12 BY MR. NEMELKA:

13 Q Mr. Gardner, can you go back to defendants' Exhibit  
14 1. It's in your binder there that Mr. Ryan gave you.

15 A The Data Exchange Agreement?

16 Q Yeah, the wind-down agreement. Move to Section 4.5,  
17 please. Were you here when Mr. Schaefer testified?

18 A Yes.

19 Q And you heard him say that it was actually a  
20 restriction on CDK accessing the Reynolds DMS; did you  
21 hear that?

22 A He may have said that.

23 Q And did you hear him say that it was a restriction  
24 on Reynolds accessing the CDK DMS? Did you hear that?

25 A That it was -- that that 4.5 is that?

HOWARD GARDNER - CROSS

1 Q Yes. Did you hear that testimony?

2 A I believe I did.

3 Q And Reynolds is the counterparty to this contract,  
4 isn't it?

5 A They are.

6 Q So that's their interpretation, isn't it?

7 MS. MILLER: Objection. Misstates the witness.

8 THE COURT: Hold on. There's an objection. I'm  
9 going to sustain the objection, but also suggest that we  
10 don't need to spend a whole lot of time on this because I  
11 don't think Mr. Gardner's interpretation is really  
12 definitive here.

13 MR. NEMELKA: We can move on.

14 THE COURT: Good idea.

15 MR. NEMELKA: May I distribute the witness  
16 binders?

17 THE COURT: Yes.

18 BY MR. NEMELKA:

19 Q Mr. Gardner, CDK's DMS contract explicitly allows  
20 agents of a dealer to access the DMS; isn't that right?

21 A I'm not familiar with the DMS contract.

22 Q Doesn't the contract state that the dealer "will not  
23 disclose or otherwise make available any of the CDK  
24 products to any other person other than employees and  
25 agents of the dealer"?

1 A Where are you referring to in there?

2 Q I'm just wondering if you have any knowledge of  
3 that.

4 A I don't.

5 Q All right. Well, let's go to Exhibit -- defendants'  
6 Exhibit 10. Do you see this is the CDK Master Services  
7 agreement -- DMS Master Services Agreement?

8 A Yes.

9 Q If you look down, it's the 2015 version? Look at  
10 the very bottom. It's 2015 CDK Global?

11 A Yes, I do.

12 Q This is the most recent version of the Master  
13 Services Agreement?

14 A I would -- I presume so, yes, if it's in this  
15 exhibit.

16 Q Please go to Section 6D. Are you there?

17 A Yes.

18 Q I'm going to read this with you. "Client shall  
19 treat as confidential and will not disclose or otherwise  
20 make available any of the CDK products." And CDK  
21 products includes the database; right?

22 A I presume that would be part of the products, yes.

23 Q Where the dealer's data is stored; right?

24 A Correct.

25 Q So it was saying it will not available any of the

1 CDK products. And if you go down "...to any person other  
2 than...", do you see that?

3 A Yes.

4 Q "...to any person other than employees and agents of  
5 client." Do you see that?

6 A Yes.

7 Q You understand that dealers designate Authenticom as  
8 their agent; correct?

9 MR. RYAN: Objection, Your Honor. The witness  
10 has testified three times he is not familiar with this  
11 agreement. Now he's --

12 THE COURT: Now this is a question not about the  
13 agreement.

14 MR. RYAN: If it's clear to the witness.

15 THE COURT: He might not know the answer, but  
16 it's a fair question. Go ahead.

17 BY MR. NEMELKA:

18 Q You understand, Mr. Gardner, that dealers designate  
19 Authenticom as their agent; correct?

20 A I don't know that definitively. I've heard that  
21 testified.

22 Q Were you here today during the testimony--

23 THE COURT: He said he heard it testified. So  
24 he's got that part of it covered.

25 BY MR. NEMELKA:

1 Q And this is the -- and this is the language that you  
2 say hasn't been changed or CDK says hasn't been changed  
3 since the 1990s; right?

4 A I heard that, yes. At least not materially.

5 Q And even though CDK has now switched positions with  
6 respect to the use of independent integrators, you  
7 haven't changed this language with respect to the use of  
8 agents, have you?

9 A I don't know. I mean I don't know if it's changed.

10 Q It's not changed in this most recent version, is it?

11 A It changed from when?

12 Q It still includes -- it still allows agents to --

13 A It says agents, yes.

14 Q It still allows agents to access the CDK database;  
15 correct?

16 A Correct. Well, I don't know if it says that.

17 Q All right. We'll move on. If you could flip to --  
18 MR. NEMELKA: I'd request to move this into  
19 evidence, please.

20 THE COURT: I think this one is already in.

21 MR. NEMELKA: Okay. I'm not sure.

22 THE COURT: If it's not --

23 MR. RYAN: It is, Your Honor.

24 BY MR. NEMELKA:

25 Q Let's go to Exhibit 32, defendants' Exhibit 32. I

1 wanted to -- we talked a lot about defendants' position  
2 that only they can access dealer data, but I want to talk  
3 about the exclusive terms with the vendors now. Do you  
4 recognize Exhibit 32, Mr. Gardner?

5 A Yes.

6 Q What is it?

7 A That's the managed interface agreement that is used  
8 to contract with vendors of Third Party Access Program.

9 Q So this is the standard 3PA contract; right?

10 A I presume so.

11 Q And once a vendor signs up to get data through  
12 the 3PA Program, that vendor is prohibited from getting  
13 dealer data from the CDK system from anywhere else;  
14 right?

15 A So if -- let me just make sure I'm clear on your  
16 question. So you're saying if they're part of 3PA, are  
17 they prohibited from getting data from any other place.

18 Q Yes.

19 A They have to get data through a CDK-approved  
20 process, yes.

21 Q So once the vendor starts using CDK for integration  
22 services through the 3PA Program, the vendor can't get  
23 the data from Authenticom; right?

24 A That's correct.

25 Q And let's say the vendor has many applications, not

1 just one, but five. This requires the vendor to use the  
2 3PA Program for all of them; right?

3 A Can you point me to where that says that?

4 Q Sure.

5 A I'll check it for you.

6 Q Let's go to Section 1E.

7 A It's a long paragraph. Point me to it.

8 Q The first sentence says "Vendor agrees that it will,  
9 beginning on the date CDK certifies the use of the first  
10 application with the managed interface system, access  
11 data on, and provide data to, CDK systems exclusively  
12 through the managed interface system." Do you see that?

13 A Yes.

14 Q And then if you go down it says "Vendor agrees that  
15 it will not," and go down to the little (ii) "contract  
16 with or otherwise engage any third-party (including any  
17 vendor client) to access, retrieve, license or otherwise  
18 transfer any data from or to the CDK system."

19 Do you see that?

20 A Yes.

21 Q So a vendor can't use Authenticom -- so this  
22 requires the vendor to only get data from the CDK-managed  
23 interface system once it has an application certified;  
24 right?

25 A That appears to be the case, yes.

1 Q Do you know how vendor client is defined in this  
2 contract?

3 A That would be dealer.

4 Q That's the dealer; right?

5 A Correct.

6 Q Do you see that this little (ii) prohibits the  
7 vendor from getting the data from the dealer?

8 A Yes, it would in this case.

9 Q So if a vendor is part of the 3PA Program, it is  
10 prohibited from getting the data from the dealer; right?

11 A That's correct. Well, there are cases where they  
12 still can, but in general that's true.

13 Q So it's false that dealers can just send the data to  
14 the vendors, at least those who are in the 3PA Program;  
15 right?

16 A Send them directly to the dealer?

17 Q Right.

18 A That's correct. Send them directly to the vendor?  
19 Yes, that's correct.

20 Q And this restriction that they have to get the data  
21 from the interface, this restriction lasts forever,  
22 doesn't it?

23 A It lasts while they're in the program.

24 Q It lasts forever, doesn't it?

25 A While they're in the program.

1 Q Let's go to Section 4(I). Are you there? Section 4  
2 (I). Are you there?

3 A Yes.

4 Q And then this is the section on *Term and*  
5 *Termination*. Section 4 is. Do you see that? So will  
6 you read for the Court what Section 4(I) says?

7 THE COURT: You don't have to. I can read it.  
8 I speed readed it.

9 Q "So all restrictions set forth in Section 1," that's  
10 the section we just were, "of this agreement shall  
11 survive the termination of this agreement" --

12 THE COURT: You didn't have to read it either.  
13 I get it.

14 BY MR. NEMELKA:

15 Q So how can CDK possibly justify imposing this  
16 exclusive dealing term forever?

17 THE COURT: Do you know if there's any  
18 justification for doing that?

19 THE WITNESS: No, and I'm not -- I'm puzzled by  
20 that.

21 BY MR. NEMELKA:

22 Q And you're in charge -- you're in charge of the 3PA  
23 Program, aren't you?

24 A Well, I'm wondering this is a 2016 contract. I  
25 would want to see if what the current one is.

1 Q Are you aware that counsel has represented -- your  
2 counsel has represented this is the current version of  
3 the 3PA contract in their statement of facts that they  
4 submitted to the Court?

5 A Well, let's see. What's the date on it? Well, we  
6 don't -- we don't know when this contract was -- what  
7 version of the contract this is. So --

8 Q All right.

9 A -- I'm surprised to see that in there, that that's  
10 something that I would want to look at more carefully.

11 Q Okay. We've talked about how CDK prohibits vendors  
12 from putting any access fee on their invoices to dealers;  
13 right? We've already talked about that today.

14 A I'm sorry. Please repeat that.

15 Q We're talked about CDK prohibits vendors from  
16 putting any data access fee on their invoices to dealers.

17 A Yes.

18 Q But, in fact, you do more than just -- you prohibit  
19 more than just that, don't you? You also prohibit any  
20 vendor from even telling the dealers about the  
21 integration of prices that CDK charges; right?

22 A Yes.

23 Q And let's go to Section 8.

24 A Section 8 of the same agreement?

25 Q Yes. Actually what I what to focus on is the last

1 sentence of Section 8 which is -- again, it says -- in  
2 addition, not just that no line item -- it's not just  
3 that you can't tell the dealer about it, it says "The  
4 vendor shall never indicate in any way to the vendor  
5 client that any increase in any price charged by vendor  
6 to any vendor client is in reaction to or in any other  
7 way associated with any modification in the price charged  
8 by CDK hereunder." Do you see that? Do you see that?

9 A I'm just reading it. Yes.

10 Q CDK has this provision in the contract because it  
11 doesn't want dealers to know the true cost of using the  
12 CDK DMS; isn't that right?

13 A No, that's not true. So --

14 Q Your counsel can ask you for your explanation.  
15 Let's go to Exhibit 31. We've established that CDK has  
16 applications in the market that compete with third-party  
17 apps, right, Mr. Gardner?

18 A Please repeat.

19 Q Sure. We've established that CDK has applications  
20 in the market that compete with third-party applications;  
21 right?

22 A And vice versa.

23 Q Right. And CDK Reynolds jointly own an application  
24 that provides electronic vehicle registration and  
25 titling; right?

1 A It's part of a joint venture, yes.

2 Q And that application is called CVR; right?

3 A Right.

4 Q And CVR competes with other registration and titling  
5 providers that also need dealer data from the DMS; right?

6 A It's helpful to have the data, yes.

7 Q You can't -- they can't provide their services  
8 without the data; right?

9 A No, typically they can rekey.

10 Q Okay. Well --

11 A It's a convenience factor for them.

12 Q CDK agreed that it would not let CVR's competitors  
13 participate in the 3PA Program, at least not on the same  
14 terms as CVR; right?

15 A Where are you looking?

16 Q I'm just asking you.

17 A Oh. Repeat the question.

18 Q CDK agreed that it would not let CVR's competitors  
19 participate in the 3PA Program, at least not on the same  
20 terms as CVR; right?

21 A So my understanding is that the terms are actually  
22 more favorable.

23 Q CVR's competitors were "not allowed to sign"; right?

24 A They are now.

25 Q Will you go to page 26.

1 A 26?

2 Q Yes. It's slide page 26 of the presentation.

3 A Okay.

4 Q And the title is *Category Restriction in Place*. Do  
5 you see that?

6 A Yes.

7 Q And some examples. Look at the third bullet point.

8 CVR *Competitors*.

9 A Correct.

10 Q "Not allowed to sign, even with extract, only unless  
11 in a territory not of value to CVR." What does that  
12 mean, *not in a territory of value to CVR*?

13 A I'm not sure. I presume it means that it's an area  
14 where they're not operating.

15 Q Right. It's in a state where CVR doesn't operate;  
16 right?

17 A It's not clear, but that sounds reasonable.

18 Q And then it says "Could allow extract only  
19 integration or extract/writeback with higher pricing."  
20 Do you see that?

21 A Correct.

22 Q Now, Mr. Malcolm Thorne testified about the change  
23 in pricing structure and I wrote down exactly what he  
24 said. He said "The first way that pricing structure  
25 changed is every vendor pays the same price." Do you see

1 that? I mean do you recall that -- do you recall that  
2 testimony from Mr. Thorne?

3 A Yes.

4 Q And he said yes, everyone paid the same money for  
5 the access that they received.

6 A I don't know if that's a direct quote.

7 Q You remember that testimony generally.

8 A I remember that in concept he said that. So whether  
9 he -- I don't know what he intended to say.

10 Q This bullet point is not consistent with that  
11 testimony, is it?

12 A So Mr. Thorne also said that this was a preliminary  
13 draft. It's dated October 31, 2014. We're almost three  
14 years from there. And there are CVR vendors who have  
15 joined the program since then.

16 Q Have there been in California where CVR operates?

17 A I don't recall where they are.

18 Q Has there been a competing EVR (sic) application  
19 allowed to compete in the 3PA Program from California?

20 A I'm not sure.

21 Q There hasn't been, has there?

22 A I'm not sure.

23 Q Okay.

24 A I would have to check.

25 Q All right. Let's go to Exhibit 24, please.

1 A 24?

2 Q Yes. Are you there?

3 A Yes.

4 Q Okay. First a few questions. CDK believes that  
5 DealerVault is secure, doesn't it?

6 MR. RYAN: Your Honor, I request to take this  
7 off the screen as highly confidential.

8 THE COURT: Sure.

9 THE WITNESS: Repeat the question again.

10 BY MR. NEMELKA:

11 Q Sure. CDK believes that DealerVault is secure,  
12 doesn't it?

13 A Are you directing me to a page or are you just  
14 asking?

15 Q Not yet. I'm just asking you a question. CDK  
16 believes that DealerVault is secure; right?

17 A I don't think that that's necessarily true. I think  
18 that security is a matter of degree.

19 Q CDK --

20 A So I could talk about the security of the data as it  
21 leaves the DMS. I could talk about the ability of  
22 DealerVault to access large amounts of data on the DMS.  
23 We could talk about the Microsoft Azure network. If  
24 you're talking about that, it seems plausible that, yes,  
25 it probably is secure.

1 Q CDK believes that DealerVault is a solution to data  
2 security, doesn't it?

3 A Repeat the question, please.

4 Q CDK believes that DealerVault is a solution to data  
5 security, doesn't it?

6 A A solution to data security?

7 Q Um-hmm.

8 A That's a pretty big order.

9 Q Right.

10 A Solution to all data security?

11 Q You think it's a data security solution; right?

12 MR. RYAN: Objection. He's just arguing with  
13 him. It's a very vague question.

14 THE COURT: It is kind of argumentative. I'll  
15 sustain it.

16 BY MR. NEMELKA:

17 Q Okay. Let's go to page 13. Are you there?

18 A Yes.

19 Q This says, the top, the slide is titled *Situation*  
20 *Assessment/Market*. Do you see that?

21 A Yes.

22 Q If you look at the last box in the bottom left, it  
23 says "Dealer data solutions gaining traction." Do you  
24 see that? "Dealer data security solutions gaining  
25 traction." Do you see that?

1 A Yes.

2 Q And then the first one it lists is DealerVault. Do  
3 you see that?

4 A Yes.

5 Q And then it also says "Support from NADA." Do you  
6 see that?

7 A Yes.

8 Q That's the same NADA whose memo CDK has been -- you  
9 refer to in your testimony, isn't it?

10 A Yes.

11 Q So DealerVault supported by NADA; right?

12 A Well, I don't know what NADA knows about their  
13 access methods.

14 MR. NEMELKA: Your Honor, we move to admit  
15 Exhibit 32. DX 32.

16 THE COURT: Is there any objection to 32?

17 MR. RYAN: What was 32?

18 MR. NEMELKA: I forgot to do DX 32.

19 THE COURT: DX 32 is the CDK vendor contract.

20 MR. RYAN: No objection.

21 THE COURT: Okay. That's in.

22 MR. NEMELKA: I also move to admit DX Exhibit  
23 24.

24 MS. GULLEY: Already done.

25 MR. NEMELKA: Already done. All right.

1 BY MR. NEMELKA:

2 Q Mr Garner, could you please go to your declaration,  
3 which is -- it should be the very first thing in your  
4 binder. Is it?

5 A No.

6 MR. NEMELKA: Steve, can you pull up the Howard  
7 Gardner declaration?

8 THE COURT: I think it's DX 155 in the binder.

9 MR. NEMELKA: Yeah, it's 155.

10 MR. RYAN: Can I give him a hard copy?

11 THE COURT: It's in the binder.

12 MR. RYAN: Oh, I thought it wasn't.

13 THE COURT: Yeah, it's in there. Assuming it's  
14 the same declaration.

15 MR. NEMELKA: It is.

16 BY MR. NEMELKA:

17 Q Mr. Gardner, could you go to paragraph 21, please.

18 THE COURT: No, it's in the binder. You just  
19 can look at that one. But in the binder, DX 155. 155 is  
20 your declaration.

21 MR. NEMELKA: Thank you, Your Honor.

22 BY MR. NEMELKA:

23 Q Could you please go to paragraph 21. Are you there?

24 A Yes.

25 Q The last sentence of your declaration in the

1 paragraph says "For example, dealers can use CDK report  
2 writing tools to extract and send their data to whomever  
3 they choose."

4 A Correct.

5 Q That's not true, is it?

6 A Well, they can send it to whomever they choose.

7 It's true that the Third Party Access members can't use  
8 the data.

9 Q So dealers can send it to whomever they choose, but  
10 the vendors can't actually use it?

11 A There's a reason for that and I'll let him do the  
12 redirect.

13 MR. RYAN: Maybe he would like to ask.

14 BY MR. NEMELKA:

15 Q Sure. Go ahead.

16 A So the 3PA Program has core principles built into  
17 it. Malcolm talked about those. It's about security,  
18 which means certain things. It's about accountability,  
19 which means certain thing. It's about transparency,  
20 which means certain things. It's about a level-playing  
21 field, which means certain things, which we could go into  
22 great detail on all of those.

23 Q No, I'll let you answer, but be respectful of our  
24 time.

25 A But the point is that for the brand 3PA to mean

1 anything, for it to serve its purpose of providing a  
2 guarantee and assurances and peace of mind to dealers and  
3 to vendors, it has to consistently stand for the same set  
4 of principles. So if data is coming from the DMS point  
5 to point to the third-party, it's more secure. And it's  
6 more accountable and more transparent when the data  
7 starts to move from other sources, including dealers, all  
8 those things start to break down. So the 3PA Program  
9 stands for that.

10 Q Okay. Mr. Gardner, please go to paragraph 51.

11 A I'm sorry, 51?

12 Q Paragraph 51 of your declaration, yes. Do you see  
13 that it says "CDK -- The guidelines and requirements of  
14 CDK's 3PA Program. Vendors are permitted to execute bulk  
15 extraction queries on the DMS only between 10 p.m. and 5  
16 a.m. in order to reduce system burden." Do you see that?

17 A Yes, I do.

18 Q Are you aware that that's exactly when Authenticom  
19 most often pulls data, long after the store is closed?

20 A I have data that says otherwise.

21 Q Are you aware that that is exactly when Authenticom  
22 most often pulls data?

23 MR. RYAN: Objection. I'm sorry.

24 THE COURT: He modified it. Overruled. Go  
25 ahead. Usually they do it at night; is that right?

1                   THE WITNESS: Very often they do it at night,  
2 but not exclusively. So we have data that says there's a  
3 lot of activity during the day.

4 BY MR. NEMELKA:

5 Q        Okay. Two more lines of questions, then I'm --

6 A        It's the same.

7 Q        Please go to paragraph 84. Here you're describing  
8 Auto/Mate. So you write here "Another DMS provider,  
9 Auto/Mate, requires DMI to submit authorization forms  
10 executed by the dealers before it allows DMI to access  
11 the DMS and obtain data on their behalf using DMS login  
12 credentials supplied by Auto/Mate." Do you see that?

13 A       Yes.

14 Q       So you still use login credentials to access data on  
15 the Auto/Mate DMS; right?

16 A       What we've done is we've establish a principle which  
17 is that you would want to receive data in a method that's  
18 authorized by the DMS provider, which is what this is  
19 saying.

20 Q       But you do use login credentials to access data from  
21 the Auto/Mate DMS.

22 A       As provided by Auto/Mate, the DMS provider.

23 Q       So CDK is acquiring Auto/Mate, isn't it?

24 A       There's an offer in progress or a purchase in  
25 progress.

1 Q And Auto/Mate has 7 percent market share?

2 MR. RYAN: Objection. Relevance.

3 THE COURT: Overruled.

4 THE WITNESS: I don't know what their market  
5 share is. I don't think it's that high.

6 BY MR. NEMELKA:

7 Q Well, you stipulated it is. So after the  
8 acquisition, CDK will have 50 percent of the DMS market;  
9 right?

10 A I don't think that's the case. I don't know. I'm  
11 not sure if you know. But I don't believe it's 50  
12 percent.

13 Q Okay. Well, adding 43 percent to --

14 THE COURT: Okay. He doesn't know. Move on.

15 BY MR. NEMELKA:

16 Q So question for you. After CDK closes its  
17 acquisition of Auto/Mate, is CDK still going to let  
18 Legacy Auto/Mate dealers provide login credentials to  
19 independent integrators like Authenticom?

20 A That's still to be decided as far as I know.

21 Q So CDK might?

22 MR. RYAN: Asked and answered.

23 THE COURT: It is. But might they do it?

24 THE WITNESS: Sure. I mean --

25 THE COURT: Good enough.

1 BY MR. NEMELKA:

2 Q Okay. Go to paragraph 14.

3 A Same declaration?

4 Q Yes. So here you write "In or about July 2013, to  
5 the best of my recollection, I made a statement to the  
6 effect that ADP has always understood that dealerships  
7 own their data and enjoy having choices on how best to  
8 share and utilize that data with others." Do you see  
9 that?

10 A Yes.

11 Q Did you write that statement yourself?

12 A It was written my marketing and I approved it.

13 Q And you say here that you were referring just to the  
14 3PA Program; right?

15 A I don't know -- well, it was -- the declaration says  
16 it's in support of the 3PA Program. It doesn't mean it's  
17 exclusively in support of the 3PA Program.

18 Q But you weren't referring to dealers having the  
19 choice to share usernames and passwords with independent  
20 integrators, were you?

21 A So you're asking me if I was referring to that in  
22 this case?

23 Q Uh-huh.

24 A In the context of 3PA I probably was not.

25 Q Okay. Let's go to Exhibit 75. Are you there?

1 A There it is. Okay.

2 Q This is a press release from ADP CDK on February  
3 2nd, 2007; right?

4 A Sorry. 75? November 18, 2013.

5 Q Exhibit 75 is where I'm trying to go.

6 A That's where I am.

7 Q Are you there?

8 A Yeah. Automotive News of November 18, 2013.

9 Q Oh. It's plaintiff's Exhibit 75. There could be  
10 the wrong one in your binder.

11 MR. PANNER: Can we have the monitor restored,  
12 Your Honor?

13 THE COURT: Sure.

14 BY MR. NEMELKA:

15 Q All right. Just look at the screen. Are you there?

16 A Yeah. It's kind of hard to read.

17 Q We can blow that up. If you go down to the third --  
18 the last paragraph there at the bottom. It says "ADP has  
19 always understood that dealership's only data and enjoy  
20 having choices on how best to share and utilize that  
21 data." Do you see that?

22 A Yes.

23 Q That's word for word what you said a few years  
24 later; right?

25 A Yes.

1 Q And if you look up in the press release --

2 MR. NEMELKA: Sorry, Steve. It's the -- the  
3 first two paragraphs there.

4 Q It says -- the last sentence of the first paragraph  
5 says "ADP's Third Party Access Program consists of three  
6 different levels of access to dealership data to choose  
7 from." And the first one is "Dealer provides access to  
8 third party through dealer-supplied user IDs and strong  
9 passwords." Do you see that?

10 A Can you point me to it?

11 Q Sure. The first sentence in the next paragraph.

12 A Yeah, I see that.

13 Q So when you said this statement, were you referring  
14 to this? Like --

15 A I was referring -- when was my statement made?

16 Q 2013.

17 A Yeah, so this was 2007. I was talking 2013.

18 Q But using the exact same language as Mr. McCray;  
19 right?

20 A The quote was pulled, I'm sure, because it was  
21 convenient for somebody in marketing.

22 Q Last questions. If you go to the -- if you go to  
23 the next page of this press release.

24 MR. NEMELKA: If you go to the top, if you just  
25 pull out the first two paragraphs, Steve, if you could.

1 Q It says "ADP recently joined the open secure access  
2 organization in support -- in order to support its policy  
3 in regard to third-party access." Do you see that?

4 A Yes.

5 Q And "The ADP supports the five key principles  
6 outlined by OSA." If you go to the fifth principle,  
7 could you please read that out loud?

8 A "ADP believes in the fair, competitive environment  
9 and does not use its leverage through supply of the  
10 Dealer Management System to reduce competition through  
11 the restriction of data access."

12 Q But that's exactly what CDK is doing now, isn't it?  
13 Using its leverage through supply of the Dealer  
14 Management System to reduce competition through the  
15 restriction of data access.

16 A No.

17 MR. NEMELKA: No further questions.

18 THE COURT: Okay. Redirect? (5:40 P.M.)

19 REDIRECT EXAMINATION

20 BY MR. RYAN:

21 Q Did you have something you wanted to say when  
22 counsel said I could ask you? Do you recall that?

23 A I don't actually recall --

24 THE COURT: I think we followed up with the time  
25 actually.

1 MR. RYAN: No questions.

2 THE COURT: All right. Very good. Thank you,  
3 Mr. Gardner.

4 (Witness excused at 5:40 p.m.)

5 THE COURT: Let's check in and see where we are.  
6 We've got ten minutes to get in what I think by my count  
7 are three witnesses, including two experts.

8 MR. RYAN: Mr. Addanki, I believe, is next.

9 THE COURT: Okay. Tell me who all we have.

10 MR. RYAN: Mr. Addanki is our economist. Dr. Z.

11 THE COURT: And that is the --

12 MR. RYAN: Irreparable injury, financial  
13 analyst.

14 THE COURT: Yes. The counter to Mr. Klein.

15 MS. MILLER: There's it.

16 THE COURT: Not Mr. McCray?

17 MR. RYAN: No. Mr. McCray's declaration is  
18 here. He retired but he lives in California.

19 THE COURT: Good. Very good. All right.

20 Sounds good. So how should we proceed? I can give you  
21 until about 6:30 here tonight.

22 MR. RYAN: I think we can move straight ahead  
23 unless the Court wants to take a break.

24 THE COURT: Let's just keep going until 6:30 and  
25 then I've got enough time that I can -- maybe we could

1 finish up a witness before you do your closings. Just so  
2 you can --

3 MR. RYAN: Tomorrow morning you mean?

4 THE COURT: Yeah. I'm also very open to you  
5 saying the declaration is in. Come on up. You're going  
6 to get settled while we debate the technicalities here.  
7 I'm also very open, if you feel that you've got an  
8 adequate declaration -- if you feel you've got an  
9 adequate declaration, you know, you can rely on it; so...

10 MR. RYAN: For anyone, for either one of these  
11 two.

12 THE COURT: For anyone. I am particularly  
13 interested in hearing from Mr. Addanki.

14 **SUMANTH ADDANKI, DEFENDANTS' WITNESS, SWORN**

15 DIRECT EXAMINATION

16 BY MR. RYAN:

17 Q Can you state your name for us, please.

18 A Sumanth Addanki.

19 Q And Mr. Addanki -- Dr. Addanki, you're here as an  
20 expert witness in this case?

21 A I am.

22 Q Could you summarize for the Court, please, your  
23 background that's relevant to your testimony as an expert  
24 witness.

25 A Yes, Your Honor. I have a Ph.D. in economics from

1 Harvard University. I have worked in the field of  
2 antitrust economics, specializing in intellectual  
3 property, and in consulting for the last 31 years. I  
4 have testified frequently about these subjects; written  
5 many articles about these subjects; been invited to  
6 testify by the Senate Judiciary Committee; by the  
7 Chairman of the Federal Trade Commission on these  
8 subjects as an expert, not an a lobbyist. And I have  
9 been retained by the U.S. Department of Justice, what I  
10 believe to be the most principal plaintiff out there, to  
11 serve as their antitrust expert in cases they were  
12 bringing.

13 THE COURT: Very good. All right. Let's dig  
14 into this case.

15 BY MR. RYAN:

16 Q Okay. And you've written a report in this case?

17 A I have.

18 Q And you've reached certain conclusions?

19 A I have.

20 Q We're looking for that summary of conclusions to go  
21 up on the screen. I have a sheet of paper that's in  
22 front of you while we're looking for it as well.

23 A This just sets forth, Your Honor, in a few simple  
24 sentences really what I think is important from the  
25 economic standpoint in this case and what we absolutely

1 need to keep in mind if we're not going to end up with --

2 THE REPORTER: I'm sorry, speak in to the mic,  
3 please.

4 THE WITNESS: I certainly will.

5 BY THE WITNESS:

6 Q And your first -- the first point is what,  
7 Mr. Addanki?

8 A So, Your Honor, understanding the parties'  
9 incentives is always important from an economic  
10 standpoint. It's crucial here because the parties'  
11 incentives, the defendants on the one side and  
12 Authenticom on the other, have very different intensives.  
13 They have very different business models, and, therefore,  
14 that gives them different incentives. And those  
15 different incentives leads to very different behaviors on  
16 each of their parts.

17 I think it's worth taking a moment to understand  
18 those because they have important implications for how to  
19 interpret, from the economic standpoint, what we're  
20 seeing going on here.

21 First and foremost, Authenticom and others like it  
22 are not in the DMS business. They make their money  
23 through accessing databases and doing whatever processing  
24 of the data they scrape from those databases and selling  
25 them to people who have a need for those data. First and

1 foremost, Reynolds and CDK are in the DMS business.  
2 That's where they make the majority of their investments.  
3 That's where they make the majority of their revenue and  
4 their profits. What Authenticom does is a small piece of  
5 the revenue pie for a Reynolds or a CDK. Very important  
6 to understand that.

7 Because they are first and foremost DMS suppliers,  
8 they have certain interests and incentives that  
9 Authenticom simply doesn't have. For instance, they have  
10 a deep interest in assuring the performance, reliability  
11 and integrity of the DMS. It's self-evident why. They  
12 are the supplier of the DMS. As the core engine,  
13 software engine of an automobile dealership or a vehicle  
14 dealership, the supplier of that has certain explicit  
15 implicit responsibilities from an economic standpoint.  
16 So they will -- they have a big interest in ensuring  
17 those expectations are met. They invest a lot of money  
18 in making sure those expectations are met. If something  
19 goes wrong along those dimensions, they bear the cost of  
20 it.

21 Another important implication of these different  
22 incentives is that companies like Reynolds and CDK have a  
23 very significant interest in making sure that the  
24 application universe for their DMS is thriving, is  
25 flourishing. Because that is a very important part in

1 creating, as time goes on, of what makes the DMS  
2 important, attractive and reliable in the view of the  
3 dealer customer that they serve. So their ability to  
4 attract and retain DMS customers depends not just on  
5 their keeping the DMS functioning well, but also on  
6 making sure that there is a good universe, a thriving  
7 universe of vendor applications from third parties  
8 available for their DMS.

9 THE COURT: Why do they necessarily have to be  
10 from third parties?

11 THE WITNESS: Simply because if you look at the  
12 Reynolds case, what they have in the application space is  
13 a tiny fraction of what is actually used on Reynolds  
14 DMSS. CDK's fraction is little bigger, but it's still  
15 definitely less than the majority of what's out there.  
16 And ultimately it's a question of core competencies also,  
17 Your Honor. What they are good at is the DMS and they've  
18 got some things that they bought as applications, but  
19 there's a lot more going on out there that doesn't need a  
20 lot of DMS skill but needs a lot of application  
21 development skill. And that's really the way systems  
22 have kind of evolved. The layers are layered on.

23 This has kind of really important implications if --  
24 and Your Honor, obviously you're going to ask me any  
25 questions you want. I hope you don't mind if I just

1 speak in a matter of form.

2 THE COURT: No. As long as you keep the pace  
3 moving, I'm okay.

4 THE WITNESS: That's great. So once we  
5 understand these incentives, I think we step back and  
6 take a look at some of what's been going on, the events  
7 in this case that have been -- I think, even the expert  
8 for the plaintiffs admitted have been a little difficult  
9 to understand or at least put in an appropriate economic  
10 context.

11 Let me start with the agreements. Every time I, as  
12 an antitrust economist, look at an agreement potentially  
13 having horizontal implications, and certainly on the  
14 letter of the agreements here I think there's no obvious  
15 horizontal effect. But if there's a potential for  
16 horizontal effect, I want to know about it because we  
17 don't like horizontal agreements. Typically we tend to  
18 regard them as potentially sensitive.

19 Here I see two things going on. I see a company  
20 that has had a particular view, a particular approach to  
21 its DMS product change; do a 180 on that approach. And I  
22 find that's an interesting fact. But the company with  
23 whom it's entering into these agreements has had that  
24 other philosophy for at least a decade. So when I look  
25 at what could have been in these agreements that somehow

1 tip the balance in favor of moving to this model on CDK's  
2 part, I think we can all agree we come up with basically  
3 nothing. It was either in CDK's interest, Your Honor,  
4 unilaterally to make this change -- and I want to talk a  
5 little bit about the change and what we can infer from  
6 the fact that these parties made these changes. And that  
7 decision stands or falls on the economics of what it  
8 means for CDK as a DMS vendor.

9 Reynolds has not in recorded history been a hostile  
10 integrator into CDK systems. Any move to a closed system  
11 would necessarily require CDK to put up the walls; right?  
12 In other words, it's not enough to just declare that  
13 you're making -- you're closing your system. You have to  
14 do all of the security stuff that keeps the hostile  
15 integrators out.

16 So there's nothing really beyond a paragraph, that I  
17 think of as having an economic content, to an assurance  
18 from Reynolds that it's not going to hostilely integrate  
19 into CDK. It's never done it. I think anyone observing  
20 this industry would be -- make the perfect reasonable  
21 inference that that was not a realistic threat of any  
22 kind to CDK's decision.

23 So when I look at the decision to close the system,  
24 I find two decisions separated by probably close to a  
25 decade, taken independently, to say this is the way to

1 go. So let me talk a little bit about those decisions.

2 I think we've heard pretty extensive testimony that  
3 when the decision was made to close the system, there  
4 were losses. And for a DMS company, the losses were  
5 where it really hurts. They were --

6 THE COURT: You're talking about the Reynolds  
7 decision?

8 THE WITNESS: The Reynolds decision first. And  
9 the losses hurt because that's where they make their  
10 revenue and profit. So I, as an economist, step back  
11 from that, Your Honor, and say okay, here's a decision  
12 that probably was anticipated to cost where it really  
13 hurts in the DMS space: Core, revenue and profit. It  
14 did, in fact, have exactly that effect. Companies don't  
15 undertake that kind of change unless they really believe  
16 as an economic matter that not doing so is going to be  
17 even more expensive. Basically you always assume that  
18 companies act in their best interests. So I look at that  
19 and I say I don't know what exactly -- again, I'm not in  
20 their heads. But we've heard some of it. And the  
21 security issues absolutely could arise to the level of  
22 solid economic cause, they just say I can't afford it.  
23 I'm not going to be in the position a year or two years,  
24 three years, four years down the line of being left  
25 holding the baby with a breach or a scandal of some kind

1 having to do with security. So to me the idea that --

2 THE COURT: I think I get Reynolds.

3 THE WITNESS: So now --

4 THE COURT: It would be rational for them to say  
5 okay, where security is going to be really important,  
6 we're making it a closed system. That's how we do it;  
7 make that decision more than a decade ago. That part I  
8 get.

9 THE WITNESS: And as they get better at it, and  
10 whatever was referred to as the forced march, as they're  
11 getting better at it and it is creating problems in the  
12 DMS space, they're losing clients, CDK is picking up  
13 clients. CDK is picking up those clients, as we saw in  
14 those slides. When you see CDK in view of that  
15 development saying I could be picking up more clients,  
16 growing my market share, making a lot of money from these  
17 DMS customers that I'm getting instead say I'm going to  
18 close the system, I'm going to close the system and  
19 forego all of these extra additional customers that have  
20 been defecting from Reynolds to me, again, I look at it  
21 and say there is no earthly reason to do that, to stop  
22 essentially laughing all the way to the bank unless you  
23 believed that there was some real cost for not doing so.  
24 And we've heard testimony about that. We've seen  
25 documents about that. But to me, looking abstracting at

1 the documents, Your Honor, just the very fact that in  
2 light -- in view of the success you were having with --  
3 the apparent success you were having with this open  
4 model, the idea that you would close it then to me says  
5 you saw a real cost coming down the pike if you didn't  
6 close it.

7 Now, given the revenue pie and the profit pie, just  
8 as a starting gate matter it's not plausible to suggest  
9 that this was something done to increase your profits by  
10 charging more for data integration. And there I've got  
11 to drill a little deeper into this, Your Honor. And  
12 let's say already --

13 THE COURT: You're saying the opportunity to  
14 increase profits doesn't explain CDK's decision.

15 THE WITNESS: It absolutely cannot explain CDK  
16 -- the numbers just don't work. The total of the  
17 integration business is some single digit percentage, 4  
18 percent or so of CDK's revenues.

19 THE COURT: And where do you get that number?

20 THE WITNESS: From data I've seen over the  
21 course of time. I don't think data was produced in the  
22 course of litigation, but it's very small.

23 THE COURT: Because you heard Mr. Thorne say  
24 that was one of the things he wanted to do --

25 THE WITNESS: Yes.

1                   THE COURT: -- in the 3PA refresh. We weren't  
2 making enough money on it, so we're going to make more  
3 money.

4                   THE WITNESS: I think it's a couple things. I  
5 think it's fair value is what he used; right? And  
6 there's something that I think -- if you'd like me to  
7 talk about that for a minute, Your Honor.

8                   THE COURT: There's two explanations.

9                   THE WITNESS: Right.

10                  THE COURT: The explanation I've been given is  
11 security is a big problem. That's the defendants' view.  
12 And so we all recognize the Target breach and all the  
13 other stuff that happens in 2015 really sensitized people  
14 to it. And so presumably the market values it and we  
15 realize that in order to not face some catastrophic cost,  
16 CDK says now is the time we finally have to close the  
17 system. Security is so important we have to do that.  
18 But Mr. Thorne concedes, and the plaintiff's story is  
19 that really the primary reason was that they could  
20 capture the market for data integration services if the  
21 two largest suppliers both went to a closed system. If  
22 you got rid of the third-party integrators, the two of  
23 them together would make virtually all the money in the  
24 data integration market. So yeah, I get it. Their  
25 proffered explanation is security.

1           But the plaintiff's explanation is that if they both  
2 agreed, they would be able to successfully capture the  
3 market for data integration. But if they didn't agree,  
4 it would all go somewhere else.

5           THE WITNESS: See, the problem I think --  
6 there's two problems. There's a very fundamental problem  
7 with the theory, which I'll come to in a second, but the  
8 problem even with the agreed part is you didn't have an  
9 agreement. Reynolds had Authenticom out of Reynolds  
10 systems for all practical purposes. Reynolds had DMI out  
11 of Reynolds systems for all practical purposes. All it  
12 takes is your investment in the technology.

13           THE COURT: That explains how Reynolds could do  
14 it.

15           THE WITNESS: Right.

16           THE COURT: They could just unilaterally say you  
17 guys are out. We have econological means; we've learned  
18 this over a decade. We can stop you guys from getting  
19 in. Now CDK comes out of it. I think the plaintiff's  
20 theory is in this environment, as long as there's not a  
21 really good alternative open system, CDK is now in a  
22 position to say all right, I'll join you on the forced  
23 march and we will be able to capture the third-party  
24 integration market because now there's no longer a viable  
25 alternative.

1                   THE WITNESS: But there's no agreement involved  
2 there, Your Honor. The point being that CDK --

3                   THE COURT: That's the fact that we have to  
4 establish.

5                   THE WITNESS: Well, the point is though -- let's  
6 look at the economics here; right? Reynolds is closed.  
7 That has been a historical fact for decades. If CDK  
8 chooses to close, the success of that closure, whether or  
9 not there's an agreement, the success of the closure  
10 depends entirely on whether they can block access. As  
11 long as they cannot block access, there's going to be  
12 hostile integration because the entry cost is minimal for  
13 hostile integration. So there's going to be hostile  
14 integration as long as they cannot block access. If they  
15 can block access, the fact that the other big DMS is  
16 closed is a fact. There's no agreement needed to affect  
17 that. That's my point about where is the agreement? Why  
18 do I need an agreement for this? This is your election.  
19 I can just sit here and say as long as I can succeed in  
20 closing the system, I'm done. I can change to that  
21 model.

22                   The problem with viewing, if I may switch to that,  
23 the real fundamental with this whole theory -- let's go  
24 back to what I said earlier, Your Honor. They are DMS  
25 suppliers. When they lose DMS customers to Reynolds, to

1 DealerTrack, CDK bleeds the same when that DMS customer  
2 goes.

3 Now, the vendor infrastructure, the vendor ecosystem  
4 I think I've heard the word used, is very important to  
5 that business also. But fundamentally, and I think all  
6 of the calculations done by Dr. Singer really are  
7 entirely consistent with this, there is a cost of  
8 ownership for the dealer to use the DMS. These are smart  
9 sophisticated buyers. Whether or not they're good at  
10 social security, I don't know. But they're smart  
11 sophisticated buyers, the car dealers. They know what  
12 the cost of doing business is. If you are going to stick  
13 it to the vendors by raising the data fees in a  
14 competitive vendor environment, the economics is  
15 straightforward. They will pass through. They're not  
16 going to be called passed through, they're going to pass  
17 through. They're either going to get out of business or  
18 raise the price.

19 And the point is, Your Honor, it's system wide.  
20 It's to all vendors. So the whole price thing goes up,  
21 which means that the cost of doing business to the dealer  
22 has gone up; which means that the cost of using a CDK DMS  
23 has gone up.

24 There's a very simple fundamental principle in  
25 economics, Your Honor, that you may have an important

1 product, but you get to collect your rent for that  
2 product once. If you raise the price here, you will get  
3 defections or you will have to lower your price somewhere  
4 else. You can't make it both places because the dealer  
5 knows what they're paying.

6 THE COURT: Well, I think we've had a lot of  
7 evidence then about the price secrecy agreements; so...

8 THE WITNESS: Yes. It's not about -- it's not  
9 about the dealer caring where it's coming from. It's if  
10 I go to DMS from CDK, here's what I pay. If I go to a  
11 DMS from R&R, here's what I pay. If I go to a DMS from  
12 DealerTrack, here's what I pay. It's a cost of ownership  
13 for the product. And cost of ownership, Your Honor, has  
14 been studied by consultants for at least the 30 years  
15 I've been doing antitrust. It's something that companies  
16 will -- if they don't have the expertise in-house,  
17 they'll go and find it. And on the internet today, it's  
18 not hard to find.

19 So the idea that there's more money to be made  
20 really is saying well, you'll be leaving money on the  
21 table then. I don't think any of these companies will be  
22 leaving money on the table. So the idea that there's  
23 this trove of money that you could exploit if you could  
24 just get these people out of the business, there isn't  
25 any money there because it's all part of the dealer cost

1 of using the system. And if you --

2 THE COURT: I'm not sure I'm really following  
3 this argument --

4 THE WITNESS: Okay.

5 THE COURT: -- because this template would work  
6 for -- in any antitrust case.

7 THE WITNESS: Not in any antitrust case, Your  
8 Honor, in an antitrust case, where as in here, you've  
9 really got the apps and the DMS being the two parts that  
10 have to function together and that the dealer understands  
11 it's paying for in order to go forward with the DMI. So  
12 I will put it this way: I could say to a perspective  
13 client here is my billing rate, and they could decide --  
14 you know, when I set my rate, I have to think about what  
15 the market is going to do with my billing rate. And I  
16 could say -- people work for me, their rates are such and  
17 such. So my rate, just to pick a number, is \$1,000. The  
18 people who work for me, their rates are \$500. If I then  
19 go to the market and say oh, and by the way, there's  
20 going to be a 20 percent surcharge on all work that's  
21 done on weekends, I've raised my price. Isn't there  
22 going to be a reaction? The cost of doing business with  
23 my firm has gone up. And it's not a particularly  
24 difficult going up sea. It's not like I'm getting, you  
25 know, ten years down the line my VW is worth \$2 instead

1 of \$2,000. It's right there. It's what it's costing me  
2 to buy these apps.

3 So the idea that you're making all the money you can  
4 on the DMS and somehow you're going to find these extra  
5 hundreds and thousands of dollars, there's an economic  
6 problem with that because if you could have charged that  
7 for it, you would have charged it. Where do you --

8 THE COURT: But you couldn't charge it if there  
9 are cheap data integrators that are available.

10 THE WITNESS: And so therefore, Your Honor, if I  
11 think about I'm buying A and B; I'm buying, I don't know,  
12 the bow tie and the suspenders; right? If the bow tie  
13 price is low for the package, you can charge a little bit  
14 more for the suspenders so that's all that's in the  
15 package. When the bow tie price goes up, you know what?  
16 You're going to lose sales if the suspender prices don't  
17 adjust to match. Because there really only is --

18 THE COURT: But I'm not going to buy the package  
19 if I can get the bow tie somewhere else for free.

20 THE WITNESS: But the point is it's not --  
21 you're not even paying the integrators. As --

22 THE COURT: Well, you can't have it both ways.  
23 If it's a cost of the dealer to have the system, then we  
24 have to recognize that even though the vendors are the  
25 ones that are paying the data integration bill, it's a

1 cost that ultimately is borne by the dealer.

2 THE WITNESS: Absolutely. So the point is if  
3 the vendor application's bill is going to be \$5,000  
4 because they're using third-party integrators and the  
5 vendor application bill is going to go up to \$8,000,  
6 there are going to be defections, substantial defections  
7 because the total dealer cost has gone up. And the total  
8 dealer cost --

9 THE COURT: Where will the defections go?

10 THE WITNESS: Well, just as they have been  
11 doing. They'll go to DealerTrack. They'll go to other  
12 places. It's not --

13 THE COURT: I assume that there's going to be  
14 some defections to the minority part of the market that  
15 has the open systems now. But I've heard plenty of  
16 evidence to suggest that there's -- I could use the term,  
17 there isn't an economic term. I just called it  
18 stickiness in the market. Some people can go, but some  
19 people aren't going to go. There are switching costs  
20 that -- and the natural barriers to entry that suggest  
21 that having a readily available alternative open system  
22 isn't that easy; not impossible, but the switching costs  
23 are high, the barriers to entry are high, and so at least  
24 for awhile over the mid-run there's not a good  
25 alternative anymore to go to an open system.

1                   THE WITNESS: One of the things, there again,  
2 Your Honor, keep in mind, is that even though there may  
3 be plenty of people who say I'm not changing. I'm just  
4 going to suck it up, I'm not changing. One of the  
5 principles that we rely on a lot in antitrust is it's  
6 competition at the margin that really protects everyone.  
7 So basically what that means is that the threat to move,  
8 as long as it's made good by some players, and we've seen  
9 some nontrivial-size players moving to nonstandard DMS  
10 integrators, as long as that's happening it's a real  
11 threat. And the fact is there were these losses and  
12 defections. This is not made up; right?

13                  When I looked at CDK's win and losses, yes, they  
14 absolutely won some, but --

15                  THE COURT: You can help me understand this. My  
16 understanding is when I look at this from an economic  
17 perspective, I don't have to find that CDK had a complete  
18 seal on the market. It didn't lose anybody. This is the  
19 point of the critical loss analysis that I guess I got  
20 from --

21                  THE WITNESS: Dr. Singer.

22                  THE COURT: -- Dr. Singer is that yeah, they'll  
23 tolerate some losses. But they'll more than make up for  
24 it by being able to charge what he thinks is a  
25 supercompetitive price.

1                   THE WITNESS: Yeah. And this is -- this is the  
2 part where you run into the other fundamental problem.  
3 You're saying basically you could impose a 30 percent  
4 price increase on dealers. And if someone told me that  
5 here's a company that could impose a 30 percent price  
6 increase on dealers and just get away with it, why didn't  
7 they do it? Why didn't they just put that 30 percent  
8 price increase in? What I'm saying that tells us --

9                   THE COURT: When are you --

10                  THE WITNESS: Just raise the price. Why did CDK  
11 have to spread \$200 million on doing all this stuff if it  
12 really could raise the price effectively by 20 percent?  
13 30 percent? Why don't they do it? So it just proves too  
14 much, Your Honor. These analyses that say oh, these huge  
15 price increases that are getting passed on, and they're  
16 getting no value; right? That's the point. They're  
17 getting no value for it. They prove way too much because  
18 they're saying you could essentially -- you're leaving  
19 money on the table. You're leaving hundreds of millions  
20 of dollars on the table. That can't be either; right?

21                  So when I look at these analyses and look at these  
22 facts, I say you've got a change that's happening. That  
23 changed that's happening is going to change the way  
24 business is done because when systems go closed, yes,  
25 people who were providing ancillary services to an open

1 system are going to be out of a job for those systems.  
2 The systems are closed. The ways of doing business will  
3 change. But the market does have a way of sorting it  
4 out. And the fact is the price to the dealer today is  
5 being constrained by exactly what the price to the dealer  
6 would be constrained by tomorrow, which is competition  
7 among DMSSs.

8 And the idea that the competition among DMSSs was --  
9 somehow ended up leaving all this money on the table that  
10 they just have to shut out these integrators and they  
11 could charge hundreds of thousands dollars more for the  
12 dealer doesn't make sense. I'm happy to explain that  
13 more if it would be helpful.

14 THE COURT: No, I think I get your theory. All  
15 right. So why don't you clean up anything else that you  
16 think that I need to hear from Dr. Addanki.

17 BY MR. RYAN:

18 Q Dr. Addanki, you were here when Dr. Singer testified  
19 that CDK did not need Reynolds to close its system. Do  
20 you recall that?

21 A Yes.

22 Q Do you agree with that?

23 A I do. That's the whole point.

24 Q For the reasons that you just said.

25 A Yes, sir.

1 Q And when you say they did not need Reynolds, you  
2 mean they could do it without an agreement; correct?

3 A They could do it unilaterally.

4 Q And that makes a big difference in the antitrust  
5 world whether it's unilateral or by agreement; right?

6 A It always does.

7 Q In your report you did a switching analysis;  
8 correct?

9 A I did.

10 Q And that's at paragraphs -- that's at paragraph 48  
11 of the report, if the Court would like us to talk about  
12 it. What was -- essentially what did your switching  
13 analysis show briefly?

14 A Briefly, Your Honor, it showed that there was  
15 switching going on. And it's yes, there are five-year  
16 contracts, but what that basically means is that every  
17 year you're going to get a crop of dealers --

18 THE COURT: 20 percent.

19 THE WITNESS: I think it's something -- the  
20 average is a little south of five years. So -- and those  
21 are your opportunities you're going after. And of those  
22 20 percent, a nontrivial amount like 15, 16, 20  
23 percent --

24 THE COURT: 17 percent, I think.

25 THE WITNESS: 17 percent. Thank you, Your

1 Honor. Were switching. Were switching and --

2 THE COURT: Now, how do I know whether that's a  
3 lot or a little? Because the same statistic is what  
4 Dr. Singer says, look, 97 percent stay year after year.

5 THE WITNESS: Well, that's because --

6 THE COURT: Or really --

7 THE WITNESS: -- 4 percent aren't coming up.

8 THE COURT: It's just arithmetic. This not  
9 fancy stuff, it's just arithmetic.

10 THE WITNESS: That's an excellent point; right?  
11 So in other words, there isn't a magic metric for how big  
12 or small is big enough. But certainly --

13 THE COURT: This common sense I hear so much --  
14 it's kind of anecdotal because I don't have a lot of  
15 statistical evidence about this. But I've seen enough to  
16 suggest the industry is highly irritated by the Reynolds  
17 forced march thing. They're not leaving in droves. I  
18 mean it's some attrition and some people get mad enough  
19 to leave, but it's not as -- the departures don't match  
20 the energy with which the irritation is expressed. And  
21 again, I don't have, like, comprehensive data about it,  
22 but like I said, they're not leaving in droves.

23 THE WITNESS: And this is my experience from  
24 having analyzed a lot of mergers, Your Honor, having done  
25 merger analysis, you get to hear from the people who are

1 unhappy. This is just the way of human nature. You  
2 don't get to hear from all the people who we're okay with  
3 it. We're okay. So we always hear the squawks, that's  
4 the first thing. And number two is there's a fair amount  
5 of new business, there's a fair amount of new doors  
6 coming in. A lot of CDKs -- when I look at CDK's  
7 switching analysis, there's new stores coming in every  
8 year. Those are up for grabs. There's no stickiness  
9 there. They're totally up for grabs.

10 THE COURT: Well, I don't know about that. If  
11 Penske opens up a new store and gets a new dealership,  
12 they're going to go with the system Penske has.

13 THE WITNESS: If Penske does, yes, absolutely.  
14 If it's someone else, you know, a smaller or a --

15 THE COURT: I think I've heard evidence here  
16 that the little guys that have got one or two stores are  
17 not really what people are really worked up about.  
18 It's -- most of them are dealer groups that have a lot of  
19 dealerships.

20 THE WITNESS: So let's go back to how much is  
21 enough. The factions from Reynolds, I think we've heard  
22 numbers saying something like 40 percent to 28 percent  
23 that move. That's --

24 THE COURT: Of those who move that --

25 THE WITNESS: No, no. Their share used to be

1 around 40.

2 THE COURT: Oh, you're talking about their  
3 market share.

4 THE WITNESS: Right. And went down to 28.  
5 That's a big change. By any measure, that's a big  
6 change. That's a lot.

7 THE COURT: Okay. Fair enough.

8 THE WITNESS: So I'd say that are people voting  
9 with their feet? Yeah, they are voting with their feet.  
10 And ultimately --

11 THE COURT: That is a really good point. But  
12 what I don't think I have is really compelling evidence  
13 of what will happen now that CDK has got a closed system.

14 THE WITNESS: That's a good point. I think if  
15 you say that openness is important to dealers, if that is  
16 going to be the problem that's viewed as a problem --

17 THE COURT: I mean is that a debate? I mean I  
18 think that's kind of been suggested. I don't know that  
19 anybody has just laid it out in those terms, but I've  
20 kind of been inferring that, especially given the way CDK  
21 thought about it as the forced march, is that that was  
22 the big disadvantage of the Reynolds system and that's  
23 what -- that's what drove people to go to CDK.

24 THE WITNESS: I would say --

25 THE COURT: Now that CDK is not an open option,

1 is that going to continue?

2 THE WITNESS: Well, I think that when you think  
3 about someone like Cox Automotive who have more  
4 applications, I believe, than anyone else, they are the  
5 leading provider of layered application, they certainly  
6 know the automotive business. They know the dealers.  
7 They've got DealerTrack. It's an open system. It's an  
8 opportunity for them, if openness really is as important  
9 as we've heard it made out to be in this courtroom,  
10 they'll run with it. They will absolutely run with it.  
11 And they have the credibility. It's not like they're --  
12 we've heard, you know, different opinions about the  
13 product itself, but the company certainly has the  
14 credibility. And they have the application base to sort  
15 of say you use us for a lot of things, buy DealerTrack.

16 So in a highly technically oriented business, Your  
17 Honor, I would say that you have a pretty good shot that  
18 those things will be overcome because if it's really  
19 important -- and if it isn't really important, it's a red  
20 herring. I am not sure, as an economist who actually  
21 studies markets like this, and I've studied them a lot,  
22 I'm not sure it's that important, the openness. Everyone  
23 would like to get something for nothing. Everyone would.  
24 The fact that a company like SIS or Authenticom that have  
25 tiny costs of doing business compared to the costs of,

1 say, a CDK or a Reynolds in providing an integrated  
2 offering of beta would charge a lower price, yeah, that  
3 will have an effect on the market. And when the model  
4 changes where that isn't viable anymore, it will affect  
5 the market. But whether the effect will be anything that  
6 changes the market considerably in terms of another  
7 player bubbling to the surface, who knows. But in a  
8 sense, it doesn't mean anything anti-competitive is going  
9 on, it's a change in business model.

10 THE COURT: Well, you said who knows. But I  
11 think that Dr. Singer pointed out and we've heard some  
12 evidence that some app providers have just baled on their  
13 products because of the increased data integration fees  
14 or data access fees, whatever you want to label it, the  
15 data fees from CDK and Reynolds that made it too  
16 expensive to provide some of the apps. So the price goes  
17 up, supply goes down as a result of the surcharge that's  
18 being imposed on vendor market as a result of the  
19 elimination of the third-party integrators. I don't have  
20 comprehensive data, but I have a few examples.

21 THE WITNESS: Right.

22 THE COURT: And Singer says this is what you  
23 would predict.

24 THE WITNESS: Yes, he does. Here's what happens  
25 when you change from someone who has essentially not

1 bearing any costs of pulling the data out to something  
2 that is set up to actually do it without imposing the  
3 cost on the system; do it in a way that preserves all the  
4 good things you want to preserve about tractability and  
5 accountability and so on and so forth.

6 A certain amount of rationing also happens, Your  
7 Honor, in the sense that when you've got all the data  
8 you're scraping off the systems and you've got it in your  
9 box and you can set it out because the incremental cost  
10 to you of selling it is zero, it's there, you've got it,  
11 you may not really distinguish at all between what's  
12 really needed for an application to do its job and what  
13 really isn't. And one of the things we heard testimony  
14 about today, which I think is important to keep in mind,  
15 is some things would like to have real-time access if  
16 it's cheap to get. But if you pay the real price of what  
17 real-time access costs the system, you wouldn't -- you  
18 don't need it.

19 And one of the things that happens when you have the  
20 DMS supplier who's actually running and maintaining the  
21 DMS pricing the service is you get pricing that better  
22 reflects what the load is on the system. And then we  
23 economists believe that prices are the best signals, and  
24 so people will buy what they need and not buy what they  
25 don't need because the prices are better by the signals

1 then. It's more efficient that way.

2 THE COURT: Yeah, I get it.

3 MR. RYAN: One more question, Your Honor?

4 THE COURT: Sure.

5 BY MR. RYAN:

6 Q I seem to remember that Dr. Singer's market share  
7 analysis showed that CDK was already beginning to lose  
8 business. Is that your --

9 A CDK is certainly -- the greater growth of CDK's  
10 business slowed abruptly after they went closed. Whether  
11 they actually lost on that I don't recall. But it  
12 absolutely slowed down.

13 Q And what happens with Reynolds? Do you recall?

14 A Reynolds -- initially there was -- we saw the chart  
15 today. There was fairly substantial defections early on,  
16 and then was really flat or slightly rising in the  
17 defections. It didn't kind of stop after CDK went  
18 closed.

19 THE COURT: It got a limited amount of data.

20 THE WITNESS: For 2016 you have -- for 2017 we  
21 have a limited amount of data; right.

22 THE COURT: We have a partial year. Here's what  
23 I mean about a limited amount of data is that -- and  
24 again, nobody really presented a statistical analysis of  
25 it. I just got the raw numbers, which are not -- we're

1 not talking millions of events here. So even if I got a  
2 full year of '16 and a partial year of '17, it's like I  
3 don't really have what I think is a really robust trend  
4 over several months.

5 THE WITNESS: No. I agree, Your Honor. What  
6 I'd say is I don't see any obvious change. I don't see  
7 any obvious falloff or anything of the kind. I do see  
8 from the very first year that was presented to the next  
9 year there was a falloff there. But after that --  
10 looking as someone spotting trends, I would say it's not  
11 doing a whole lot.

12 THE COURT: It did not strike me as dramatic  
13 trend setter. I mean some other event in 2014 could have  
14 accounted for 30 dealers doing something, so I didn't  
15 know how much to read into that.

16 THE WITNESS: Well, I'd say the one thing I  
17 would take away from it is that the Reynolds -- the  
18 impact on Reynolds from the CDK decision seems to have  
19 been negative. Nothing much happened there in terms of  
20 just looking at the trend.

21 THE COURT: Okay. (6:23 p.m.)

22 MR. RYAN: No more questions, Your Honor.

23 THE COURT: All right. I'd love to do the  
24 cross-examination tonight if we could. I don't know how  
25 long you think it will take, but let's try to endure and

1 get it done.

2 MR. PANNER: Okay.

3 THE WITNESS: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. PANNER:

6 Q Did you introduce -- you introduced a declaration in  
7 this case, but I'm not sure that Mr. Ryan asked you to  
8 look at it. I believe it's defendants' Exhibit 124. I  
9 actually have a little binder.

10 MR. PANNER: May I approach, Your Honor?

11 THE COURT: Yes.

12 THE WITNESS: I don't know your name, do I?

13 BY MR. PANNER:

14 Q I'll introduce myself. Dr. Addanki, my name is  
15 Aaron Panner. I represent Authenticom.

16 A How do you do.

17 Q I'll be asking you a few questions --

18 A Please.

19 Q -- this early evening. Now, you prepared a  
20 declaration in this case. I think it's defendants'  
21 Exhibit 124; is that right?

22 A That's right.

23 Q Have your -- any of your opinions changed since you  
24 prepared this declaration?

25 A Certainly nothing material has changed. My opinions

1 have been further informed by what I've heard here in  
2 live testimony, but I wouldn't say I've changed anything  
3 here.

4 Q Okay. Well, let me just ask you: Do you have  
5 anything to -- do you stand by the opinions in your  
6 declaration or do you want to amend anything in the  
7 declaration?

8 A I wouldn't amend anything. I think perhaps there  
9 have been enhanced or refined ways I've discussed with  
10 the Court here.

11 Q Okay. So you can't think of anything to tell me  
12 that I should be aware that actually it's not your  
13 opinion anymore.

14 A Nothing comes to mind.

15 Q Okay. Now, all of your opinions in this case are  
16 based on your understanding that there was, in fact, no  
17 horizontal agreement between CDK and Reynolds; is that  
18 fair?

19 A It's based on my understanding given to me by  
20 counsel about what the agreements meant as a legal  
21 matter, but it's also based on my interpretation as an  
22 economic matter based on the economic facts of this case  
23 of what I could reasonably infer from the agreements.

24 Q I appreciate that. But I asked you something a  
25 little simpler I think.

1 A Okay.

2 Q Your opinions in this case are based on your  
3 understanding that there was no horizontal agreement  
4 between CDK and Reynolds. Is that correct or is that not  
5 correct?

6 A They aren't based entirely on that.

7 Q To what extent are they not based on that?

8 A I can't give you a percentage.

9 Q Do you --

10 THE COURT: Let me try this: It'll be a test to  
11 see if I understand what you're saying. You've kind of  
12 been informed there's no horizontal agreement. I don't  
13 know how much time you spent reviewing the agreement or  
14 actually analyzing it. I gather that's really not your  
15 focus.

16 THE WITNESS: Right.

17 THE COURT: But I think what your opinion is is  
18 that the conduct of the actors here, the defendants,  
19 would not require there to be an agreement. Their  
20 conduct is otherwise economically rational. You wouldn't  
21 need to have the agreement to explain what they did.

22 THE WITNESS: Exactly, Your Honor.

23 THE COURT: Okay.

24 BY MR. PANNER:

25 Q Now, you would agree with me that horizontal

1 agreements not to compete are appropriately a focus of  
2 antitrust concern. I think you said that in your direct  
3 testimony; isn't that right?

4 A Yes.

5 Q And that's because, as any first-year antitrust  
6 student knows, less vigorous competition can harm  
7 consumers by leading to higher prices, lower quality,  
8 less innovation and fewer choices; isn't that right?

9 A Yes. In the typical case, reduced competition,  
10 horizontal competition leads to all of those and more.

11 Q Okay. And that's just not controversial at all.

12 A It's not controversial.

13 Q And you would agree with me that if CDK and  
14 Reynolds, in fact, reached an agreement with respect to  
15 third-party access to their respective DMSSs, that that  
16 would be a horizontal agreement?

17 A No, I'm not sure it would be.

18 Q Okay. Let me try again. If CDK in its capacity as  
19 a DMS provider reached an agreement with Reynolds in its  
20 capacity as a DMS provider with respect to the manner of  
21 access to their respective DMSSs, would that be a  
22 horizontal agreement?

23 A I see. If you're saying if you do this with respect  
24 to horizontal access and I do this with respect to  
25 horizontal -- excuse me -- with respect to dealer access

1 and I do this with respect to dealer access would that be  
2 a horizontal agreement?

3 Q Yes.

4 A I've seen agreements of that kind a lot and I would  
5 not think that they would raise -- ordinarily they would  
6 raise the kinds of questions that I would be concerned  
7 about with horizontal agreements.

8 Q That's not my question. My question is is that a  
9 horizontal agreement in your view.

10 A Not in the sense of my answer to the previous  
11 question.

12 Q Okay. In what way is it not a horizontal agreement?  
13 I'm sorry. Strike that.

14 Is it an agreement between two competitors at the  
15 same level of production?

16 A Yes, absolutely.

17 Q Okay. And, in fact, an agreement to limit the  
18 manner in which they will permit access to their  
19 respective DMSs would be a significant limitation on the  
20 competition between the two competitors, don't you think?

21 A I don't believe so, no.

22 Q And that's because DMS providers compete with  
23 respect to how data stored on their system may be  
24 provided to vendors; isn't that right?

25 A Certainly there have been efforts by DMS providers

1 to make that a point of differentiation, yes.

2 Q Exactly. Data interfaces for vendor applications  
3 are selling points that are used to advertise and promote  
4 DMSS; isn't that your opinion?

5 A They are points of differentiation, yes.

6 Q And it's also because DMS providers compete with  
7 respect to how secure their systems are; isn't that  
8 right?

9 A Those are also points of differentiation.

10 Q And it's your position that CDK agreed not to  
11 provide data from Reynolds DMS to vendors; isn't that  
12 right?

13 A CDK agreed not to do hostile access to Reynolds'  
14 DMSS, that's right.

15 Q Okay. But you were informed -- you say in your  
16 declaration that I'm informed that no provision in the  
17 Data Exchange Agreement prohibits CDK from offering to  
18 provide data from Reynolds DMSS should CDK should so  
19 chose. Do you remember writing that?

20 A Yes. After the wine-and-dine period, that was my  
21 analysis.

22 Q Who informed you of that?

23 A Counsel.

24 Q Okay. And if that was not correct, would that  
25 change your opinions in this matter?

1 A I think as a practical matter, no, because CDK had  
2 essentially been blocked out of Reynolds DMSs.

3 Q Then why did you put it in your declaration?

4 A Because I was informed of that. I thought it might  
5 be relevant.

6 Q Okay. In paragraph 31 of your declaration, you say  
7 that DMI agreed not to engage in unauthorized access to  
8 Reynolds' DMS.

9 A Let me just go there. Yes.

10 Q Which of those is -- can you explain what the basis  
11 for your opinion is with respect to CDK's position with  
12 regard to access to Reynolds' DMS?

13 A So what I say here is my understanding of what these  
14 agreements are specifying or setting forth, which was  
15 provided to me by counsel.

16 Q So counsel wrote those paragraphs?

17 A No. The agreement -- as far as the reference to the  
18 agreement not to engage in unauthorized access is  
19 concerned, I am informed by counsel that DMI had that  
20 agreement.

21 Q Okay.

22 A Made that agreement.

23 Q And you understand that Reynolds also agreed not to  
24 engage in unauthorized access to Reynolds -- excuse me,  
25 to CDK's DMS; correct?

1 A That's my understanding.

2 Q Okay. Do you know how Reynolds obtained access to  
3 CDK's DMS prior to February 2015?

4 A Don't recall.

5 Q Was that not important to your investigation in this  
6 matter?

7 A No, I simply don't recall.

8 Q Do you know how Reynolds obtained -- do you know how  
9 Reynolds obtained access to CDK's DMS after February  
10 2015?

11 A When you say Reynolds obtained access, you're  
12 talking about the application part I am assuming.

13 Q Correct.

14 A My understanding is that Reynolds was to join the  
15 3PA Program to get data from DMS -- CDK DMSs.

16 Q Did you hear testimony today that Reynolds  
17 considered it a substantial benefit to be able to  
18 participate in the 3PA Program?

19 A I don't recall.

20 Q You don't recall Mr. Schaefer's testimony about  
21 that?

22 A I don't, no.

23 Q Okay. Do you know what the terms were under which  
24 CDK agreed to provide Reynolds access to the 3PA Program?

25 A My recollection is that at least for a period it was

1 no charge.

2 Q How long?

3 A I don't remember.

4 Q Was it five years?

5 A It may have been, I don't remember.

6 Q Okay. Do you know why CDK did that?

7 A My recollection is that it was in part because  
8 Reynolds doesn't actually have a lot of applications, so  
9 there wouldn't be that much data involved. But I don't  
10 remember the rest of it.

11 Q So your testimony is that because it wasn't very  
12 valuable, CDK gave away access for free?

13 A No. In the scheme of things it was not a big  
14 imposition or big demand being imposed on the resources  
15 of the 3PA Program.

16 Q Why would CDK give it away for free?

17 A I don't know what's in CDK's mind. I can tell you  
18 as an economist that there were things being resolved at  
19 the time which included a controversy that had existed  
20 for awhile about the hostile access by DMI. They were  
21 winding down that hostile access period and permitting an  
22 orderly transition, which I think benefited both parties,  
23 but perhaps CDK felt that they were getting a good deal  
24 there. And so I don't know. I don't know what's in  
25 their minds.

1 Q Well, did you find it curious as an economist that  
2 CDK was providing its biggest competitor with this huge  
3 price advantage?

4 A It was really not its biggest competitor. In the  
5 application space Reynolds is quite small.

6 Q What percentage of the application space does  
7 Reynolds have?

8 A I don't know about percents, but it has very few  
9 applications.

10 Q Do any of those applications compete with CDK's  
11 applications?

12 A Possibly.

13 Q Did you investigate that?

14 A No.

15 Q Both CDK and Reynolds are vertically integrated in  
16 this market; isn't that right?

17 A By vertically integrated you mean?

18 Q They compete with regard to DMS systems that they  
19 provide to dealers; isn't that right?

20 A Yes.

21 Q And they compete with regard to the integration  
22 services that they provide to their dealer customers;  
23 isn't that right?

24 A No, not really.

25 Q And they compete with regard to the vendor -- with

1 the applications that they provide, both to their own  
2 customers and to the customers of their competitor DMS?

3 A Yes.

4 Q And they both have an incentive to try to make  
5 arrangements that will exclude -- that will potentially  
6 foreclose competitors at all levels of that integration;  
7 isn't that true?

8 A Not -- I don't know how you would foreclose a DMS  
9 customer -- a DMS competitor. Not true about  
10 applications. You want there to be, and I think we some  
11 evidence today about thinking -- the economic thinking  
12 behind CDK's decisions about allowing DMS suppliers, who  
13 had an application arm, participating in 3PA. And as for  
14 the middle, the integration, no, not particularly. No.

15 Q Now, did you review any -- did you see any documents  
16 during testimony today to suggest that CDK believed it  
17 was important to enter into reciprocal agreements with  
18 other DMS providers not to deal with hostile integrators?

19 A I think we saw some documents up today on that  
20 subject, yes.

21 Q And did you consider that in forming your opinions  
22 in this matter?

23 A Yes.

24 Q You saw that document before you formed your opinion  
25 in this matter?

1 A Yes, I did.

2 Q Did you list it in your declaration?

3 A I don't recall.

4 Q Okay. Are you aware that the February 2015  
5 agreement -- well, I assume you are aware at this point  
6 that it includes an express agreement not to assist  
7 others in obtaining unauthorized access to the other  
8 parties' respective DMS?

9 A Yes.

10 Q And that's a horizontal agreement, don't you agree?

11 A It's certainly an agreement between companies of the  
12 same -- in the same line of commerce that are horizontal  
13 competitors. It is not an agreement that pertains to  
14 competition in any material way.

15 Q You don't believe it's material to competition the  
16 manner in which these respective DMSs provide access?

17 A I think the -- the idea of not helping someone else  
18 breach a system is essentially a security agreement.

19 It's not --

20 THE COURT: Let me just -- you can help me out  
21 on this because you do this all the time. So it's  
22 clearly a horizontal agreement in the sense that we have  
23 competitors at the same level reaching agreement about  
24 how they conduct their business. So are you suggesting  
25 that there are categories of horizontal agreements that

1 aren't horizontal in the pertinent antitrust sense so  
2 that there's some sort of agreement that is somehow  
3 privileged, that they can enter because it's justified by  
4 some greater good or something like that?

5 THE WITNESS: A whole range, Your Honor. I mean  
6 if you and I own competing drycleaning companies across  
7 the street from one another, we could absolutely agree  
8 that our sidewalks are going to be swept by the same  
9 person. We could absolutely agree even --

10 THE COURT: We could -- we could do that?

11 There's no chance that's going to impose an antitrust  
12 issue?

13 THE WITNESS: No. I mean I think the fact that  
14 we're horizontal competitors doesn't make everything that  
15 we agree on a horizontal agreement in the sense that we  
16 mean in antitrust laws. And if I say I'm going to agree  
17 not to drive my car into your fence and you're going to  
18 do the same, it doesn't have any antitrust connotation.  
19 I agree that I'm not going to help someone burglarize  
20 your shop and you agree the same thing, that's not  
21 antitrust.

22 THE COURT: So that depends on kind of a moral  
23 assessment of the restriction; right? I mean I don't  
24 know if drycleaners compete by driving into each other's  
25 fences. I don't know that business. That's kind of --

1                   THE WITNESS: I do actually, Your Honor. I did  
2 a case on drycleaning.

3                   THE COURT: Was there a lot of fence driving in  
4 that?

5                   THE WITNESS: There was, actually. Even in  
6 Columbia, Missouri they don't.

7                   THE COURT: But it's a closer call here that the  
8 fence driving that's at issue here is the hostile access.  
9 And the moral status or the legal status of that hostile  
10 access is one of the key issues I have to deal with.

11                  THE WITNESS: It is. But here's the question:  
12 If you're saying I'm agreeing that -- because we are  
13 going to have to share information about how you got in  
14 and how I blocked you, that's pretty privileged  
15 information. If we're going to have to share that for  
16 the purpose of winding down this problem --

17                  THE COURT: I'm not talking about the wind-down  
18 thing here.

19                  THE WITNESS: I understand.

20                  THE COURT: It's the deal that CDK says I'm not  
21 going to let third parties take my data and you're going  
22 to -- and I'm not going to let anybody help get into  
23 yours, and you're going to make the same agreement to me,  
24 it has a big impact on entities like Authenticom.

25                  THE WITNESS: But, Your Honor, if you're talking

1 about a situation where to some extent you are obliged to  
2 share some of this information about -- which is fairly  
3 sensitive information about how blocking is happening and  
4 how the blocking is being worked around and it's being  
5 reblocked again and that has to happen for the wind down  
6 to continue in an orderly way, that's information that  
7 you are sharing as part of this wind down.

8 THE COURT: Let's put that to the side.

9 THE WITNESS: No, but --

10 THE COURT: I'm talking about the deal here that  
11 Reynolds says I'm going to agree not to facilitate  
12 anybody getting what we'll call hostile access to your  
13 DMS and I'm not going to do it to you. And CDK says the  
14 same thing back.

15 THE WITNESS: Right.

16 THE COURT: And the result is that we're  
17 basically agreeing that we are not going to let  
18 Authenticom get hostile access to either one of us.

19 THE WITNESS: I think what it's saying -- I'm  
20 just an economist, Your Honor. But I think what it's  
21 saying is I'm not going to help someone do that. And the  
22 reason why I would expect to see something vaguely like  
23 that here is I'm learning stuff from you that you  
24 wouldn't tell me in the ordinary course of business and  
25 I'm learning it because of this wind down. That's why I

1 keep talking about the wind down. I'm gaining  
2 information about how you're doing this blocking. I'm  
3 not going to share that with someone else. Because of  
4 doing this other business thing we're doing, we're kind  
5 of fixing this hostile access problem that we've been  
6 fighting about for awhile, you're telling me stuff and  
7 I'm telling you stuff, and we're not going to pass those  
8 things on to other people because these are things we  
9 wouldn't have learned but for having a general  
10 disagreement in the first place.

11 THE COURT: What if they made this agreement:  
12 We've learned a lot about hostile access here. And so  
13 let's agree that we're not going to share what we've  
14 learned about hostile access. We have to exchange  
15 information here, but let's agree that we'll just keep it  
16 to ourselves and we're not going to tell DealerTrack  
17 about it because we don't want them to gain the  
18 advantages that we have. Is that okay?

19 THE WITNESS: I don't know. I mean --

20 THE COURT: Because my concern here is that the  
21 third-party access is the cornerstone of this case.

22 THE WITNESS: Right.

23 THE COURT: And they seem to have made an  
24 agreement that they were going to work with each other to  
25 prevent what they labeled hostile integration. And there

1 were companies that did it and made -- they were economic  
2 actors that -- you know, they're going to paint them as  
3 outlaws because they breached the data agreements, but  
4 it's -- if not for that, you'd have to say they've agreed  
5 to limit competition for data integration.

6 THE WITNESS: I understand what you're saying.  
7 I guess I never really viewed this as having a lot of  
8 significance, partly because I would view it as just an  
9 extraordinary unlikely thing to happen in any case. Why  
10 on earth would CDK give away secrets about how to break  
11 into Reynolds' system because all of those would end up  
12 being used against CDK. Why on earth would Reynolds give  
13 away secrets about how to break into CDK's system,  
14 because those would end up being used against Reynolds in  
15 any case. If you know something valuable here, you're  
16 answer is going to be hang on to it if you close your  
17 system.

18 So I understand what you're saying and now I totally  
19 do see that if there were some real prospect that that  
20 might happen, then agreeing not to do it might have some  
21 real impact. I frankly don't see the real prospect of  
22 that happening. Why would that be in anyone's  
23 self-interest to do, as an economist.

24 THE COURT: Once they decided to close the  
25 system.

1                   THE WITNESS: Once they decided to close the  
2 system they don't do that.

3                   THE COURT: Back to the cross.

4 BY MR. PANNER:

5 Q       Dr. Addanki, I'm sure you're familiar with the joke  
6 about the economist who doesn't pick up the \$20 bill on  
7 the platform.

8 A       Yes.

9 Q       And why doesn't the economist pick up the \$20 on the  
10 platform?

11 A       The joke, Your Honor, is if it were a real \$20 bill,  
12 someone would have picked it up already.

13 Q       Okay.

14 A       It's not a very funny joke.

15                   THE COURT: I think it depends on how many times  
16 you've heard it and how you feel about economists.

17                   THE WITNESS: That's probably true, Your Honor.

18 BY MR. PANNER:

19 Q       Now, Dr. Addanki -- excuse me, is it Addanki? I  
20 apologize.

21 A       Addanki.

22 Q       Dr. Addanki, would it have mattered to CDK when it  
23 was making a decision about adopting a closed policy that  
24 Reynolds had a closed policy? That's not a hard  
25 question.

1 A I have no idea.

2 Q Dr. Addanki, you're under oath.

3 A Yes.

4 Q You understand that policies with respect to system  
5 openness are competitively significant, don't you?

6 A They are used as points of differentiation. If  
7 you're asking me the counterfactual had Reynolds remained  
8 a closed system through 2015 and CDK's management learned  
9 all the things that CDK's management learned would they  
10 have made a difference, I have no idea.

11 Q I'm sorry. I think you may have misunderstood my  
12 question.

13 A I beg your pardon.

14 Q And that may be why I was so surprised by your  
15 answer. You understand that in the 20 -- let's say 2014,  
16 Reynolds DMS has been closed for some period of years;  
17 correct?

18 A Yes.

19 Q So CDK is then making an analysis about whether to  
20 close its system; correct?

21 A It is making an analysis, yes.

22 Q And in making that analysis, it would be highly  
23 important, highly significant to CDK that Reynolds system  
24 is closed. No?

25 A It's part of the market fact.

1 Q Of course it's a part of the market fact.

2 A Yeah, it's as significant as anything else in the  
3 market. It's the reality they live in.

4 Q And CDK knows that its major competitor is closed.

5 A CDK knows everything it knows about the market, and  
6 if Reynolds is closed, that's what it knows.

7 Q And, therefore, the risk of losing customers as a  
8 result of closing is less than it would be if its major  
9 competitor were open.

10 A So who knows.

11 Q Really?

12 A I don't know.

13 Q Really? You don't know? There's no economic  
14 evidence to indicate one way or the other whether there's  
15 a market advantage from being open?

16 A So I don't know what all the attributes are because  
17 I haven't studied it; all the attributes that people are  
18 evaluating when they say am I going to pick this DMS or  
19 am I going to pick this DMS.

20 THE COURT: I'm kind of surprised too because  
21 you were so ready to admit that the openness of the CDK  
22 system was one of the reasons for the defections from  
23 Reynolds.

24 THE WITNESS: Here's what I mean, Your Honor:  
25 What I mean is if you are in a world where Reynolds is an

1 open system and CDK is a closed system, it is a  
2 completely different world. And you asked me a question  
3 about a world that is so completely different, I was  
4 really haven't thought --

5 THE COURT: Well, it's somewhat different. I  
6 mean the rules of logic and --

7 THE WITNESS: Yes.

8 THE COURT: -- I assume all the economics that  
9 you've studied at Harvard is still applicable. So it's  
10 not that different.

11 THE WITNESS: Absolutely true. I don't know,  
12 for instance, what CDK's position would have been if --  
13 would they have had a 40 percent share? I don't know.  
14 So would -- or 45 or 42 percent share or whatever it is,  
15 I don't know. So asking a question like that, this is  
16 different. It's the classic question, Your Honor. Would  
17 it matter? I'm sure it matters in some way. Would it be  
18 a deal breaker? I have no idea. I just don't know how  
19 much it would matter because it's hard to conceive of  
20 hypotheticals that are so different in the real world and  
21 say okay, let's talk about that world now. It's  
22 different. I don't know.

23 So would it matter? Yes, it would matter. But  
24 would that world -- how would that world look? I don't  
25 know.

1 BY MR. PANNER:

2 Q Dr. Addanki, again I think you may have  
3 misunderstood my question. In 2014, Reynolds system is  
4 closed; correct?

5 A Yes.

6 Q And CDK's system is open?

7 A Yes.

8 Q And CDK is making a decision about whether to move  
9 to closed system.

10 A Yes.

11 Q And in making the evaluation as to whether to do  
12 that, the fact that Reynolds system is closed was very  
13 important to it in determining the competitive  
14 consequences of going to a closed system. True or false?

15 A I just don't know.

16 Q You haven't looked at documents that indicate that?

17 A Oh. Did they take into account the fact that it was  
18 an open system and a closed system? Yes, absolutely they  
19 did.

20 Q And it was important to them in terms of evaluating  
21 the competitive consequences of closing their --

22 A I just don't know how important it was. That's my  
23 point.

24 Q Okay. Fair enough.

25 A They absolutely took it into account.

1 Q It would have been a valuable thing for CDK -- I'm  
2 not asking you to give me an estimate of how valuable.  
3 But it would be a valuable thing for CDK to have  
4 assurances from Reynolds that it does not intend to open  
5 its system; correct?

6 A If you're asking would there be some value greater  
7 than zero having that assurance, possibly, yes.

8 Q And do you think that it was of business  
9 significance to Reynolds that CDK made a decision to  
10 close its system?

11 A I actually haven't seen any of Reynolds' documents  
12 on it. I would expect that Reynolds probably had mixed  
13 feelings about it.

14 Q But let me ask you -- let me try to ask you this  
15 question: There's no dispute that in a concentrated  
16 market -- and you would agree with me that the DMS market  
17 is highly concentrated, wouldn't you?

18 A It's concentrated, yes.

19 Q That in a concentrated market, rivals monitor the  
20 behavior of the other competitors, other large  
21 competitors in the market, and make decisions about how  
22 to conduct their business based in part on what their  
23 competitors are doing; correct?

24 A Yes. There isn't a difference in concentrated  
25 markets.

1 Q No doubt about it; right?

2 A That's right.

3 Q So what's going on at a minimum is coordination  
4 between DMS -- excuse me. There's coordination between  
5 CDK and Reynolds with respect to the policy of keeping a  
6 closed system.

7 A No, I wouldn't agree with that at all.

8 Q Before, a point of competitive differentiation  
9 between CDK and Reynolds was that CDK was open and  
10 Reynolds was closed; correct?

11 A That was a point of differentiation, that you  
12 stressed, yes.

13 Q And when CDK decided to close its system, that was  
14 no longer a point of competitive differentiation;  
15 correct?

16 A That's correct.

17 Q And that reduced the intensity of competition  
18 between the two providers; isn't that fair?

19 A No, I haven't seen evidence of that.

20 Q Okay. Do you have an -- well, I should ask you  
21 this: Many economists are very good with computers and I  
22 want to know whether you consider yourself an expert in  
23 computers and information technology.

24 A I've been a software author, a published software  
25 author. I have consulted in many cases involving

1 software and computers and I'm surrounded by computers  
2 scientists.

3 Q I'm sorry?

4 A I'm surrounded by computer scientists. Most of my  
5 friends are computer scientists.

6 THE COURT: Only the software authoring is  
7 something that would plausibly contribute to your  
8 expertise as a -- in the field of computing.

9 THE WITNESS: Yes.

10 THE COURT: So let's see if we can get an answer  
11 here. Is your software authoring extensive? Are you a  
12 coder or --

13 THE WITNESS: I have designed, implemented,  
14 coded programs, Your Honor. But I mean I don't consider  
15 myself to be a software expert.

16 BY MR. PANNER:

17 Q Okay. And I'm just trying to determine it because  
18 you made a number of statements in your declaration about  
19 matters of security and you gave an opinion, if I  
20 understand it, that concerns about security were part of  
21 the justification for the decision to close the DMSS; is  
22 that right?

23 A That was my understanding.

24 Q And do you -- is that your opinion as an economist  
25 or are you simply relaying the information that you were

1 provided by the defendants in this matter?

2 A So it's -- where the -- my expertise as an economist  
3 comes in is in evaluating the plausibility of security as  
4 being a motivation for a change like that. But certainly  
5 I was informed by the documents and by speaking with the  
6 parties that it absolutely played a role.

7 Q Okay. Now, with respect to system security, I  
8 believe that you referred to the benefits of having a DMS  
9 supplier manage and curate the entire process of data  
10 integration, namely the ability to secure the system to a  
11 very high degree and maintain audits of all data  
12 transfers.

13 A If you're quoting, what are you reading from?

14 Q Oh, certainly. That is -- if I can find where I was  
15 if my outline. I believe that that is in paragraph 15.  
16 If I'm wrong, I'll correct it. No sorry. I'll strike  
17 the question. I'm sorry, it's in paragraph 13 of your  
18 declaration.

19 A 13. I'm there.

20 Q And you describe a system like that in paragraph 40  
21 of your report when you talk about an NADA recommendation  
22 with regard to a strict data push system for sharing  
23 data; right? I'm at the top of page 15 of your  
24 declaration. It's part of paragraph 40.

25 A Right.

1 Q And did you -- did you select this paragraph or is  
2 this something that counsel -- I understand we've all  
3 done this. Counsel works with you to prepare your  
4 declaration. Was this your -- did you say I think this  
5 is particularly good evidence about this or was it  
6 something that counsel said you might want to think about  
7 this? I'm not trying to get into work product or  
8 anything like that, I'm just trying to understand are you  
9 sort of buying this or is that -- have you not really  
10 thought about it?

11 A I think actually my staff and I found this more as  
12 an indication of what a trained group was saying than  
13 anything else.

14 Q Okay. And did you look at what they actually said  
15 and consider how it applied to the facts of this case?

16 A Yes.

17 Q You did.

18 A Yeah.

19 Q Okay. And did you understand anything about how  
20 DealerVault product works at the time that you prepared  
21 your declaration?

22 A No. Actually I did not know much about DealerVault  
23 at the time that I wrote my declaration.

24 Q So now that -- you were here throughout the  
25 testimony in this matter; isn't that right?

1 A Most of it, yes.

2 Q And you saw the demonstration about how DealerVault  
3 operates?

4 A I did.

5 Q Okay. Would you agree with me that DealerVault  
6 certainly complies with the guidance that's provided in  
7 this paragraph at the top of page 40?

8 A As an economist and someone who only is otherwise  
9 knowledgeable as a layperson about these things, it seems  
10 to.

11 Q Okay.

12 A But I'm not an expert on these issues.

13 Q Quite fair. Now, do you have any opinion as an  
14 economist as to whether in order to reap the benefits of  
15 a closed system, the system -- strike that.

16 You say in your declaration at paragraph 42 that "It  
17 is reasonable for a DMS supplier acting in its own and  
18 its customers' interest to undertake to manage all  
19 integration functionality in-house." Do you recall  
20 saying that?

21 A I do.

22 Q And if I refer to a closed system -- I guess I have  
23 been all day so I'm sure you know what I mean. But it's  
24 your understanding that Reynolds has done that?

25 A That's my understanding.

1 Q And you state in paragraph 35 that, "In fact, for  
2 both CDK and Reynolds, their own proprietary data  
3 integration programs are the only approved way for  
4 vendors to obtain electronic interface on the DMS." Is  
5 that your understanding?

6 A So my understanding is subject to all of the wind  
7 downs and the caveats and the qualifications we've heard  
8 about over the last two days. And apart from the Dynamic  
9 Reporting function that we heard described, that's  
10 correct.

11 Q Okay. And is it your opinion that the benefits of a  
12 closed system are lost if exceptions to that are made?

13 A So again, I don't have an opinion as a computer  
14 scientist on that. As an economist, I'll say that if the  
15 closed system is -- has benefits because of keeping out  
16 unauthorized users who may or may not be hostile, then  
17 making exceptions -- the more exceptions you make, the  
18 more it undermines the benefits you're getting from  
19 closing a system.

20 MR. PANNER: And I see it's getting very late so  
21 I'm going to try to speed up, Your Honor.

22 Q Is it your view as an economist that once the  
23 decision to close a DMS is made, disabling a third-party  
24 is necessary to be able to realize the security and  
25 performance benefits being sought? That was your

1 statement in paragraph 42 and you continue to think  
2 that's right?

3 A I do.

4 Q And it's also your view that if you allowed DMS  
5 customers to make the decision about whether to have a  
6 closed system or an open system, that if the DMS provider  
7 provided that as an option, that that would undermine the  
8 objectives that DMS firms seek to achieve by closing the  
9 systems?

10 A I do.

11 Q Okay. So if a DMS provider said to customers, you  
12 know, we can have an open system or we can have a closed  
13 system. The closed system will give you better security;  
14 it's going to cost a little bit more, but it's a system  
15 that is better. Also our interface is better. But we  
16 have both, and you can choose and make your decision  
17 about which you'd prefer. You believe that it would  
18 undermine the benefits of having the closed system if the  
19 supplier also offered the open system?

20 A I think if they were trying to coexist within the  
21 same system, I think it would seriously undermine it.

22 Q Okay. Now, you're aware that Reynolds does, in fact  
23 -- I guess you qualified your opinion, you said Reynolds  
24 does make exceptions to your knowledge.

25 A Yes.

1 Q And you're aware that they made an exception for  
2 CDK?

3 A That's right.

4 Q I think there were -- actually there was a question  
5 from His Honor this morning, and I'm sure you were here  
6 to hear it. What did CDK get out of -- what did CDK get  
7 out of the agreement with Reynolds?

8 A I really think as an economist what CDK got out of  
9 the agreement with Reynolds was a way to make a gracious  
10 exit from what was a failing program of hostile  
11 integration with DMI. And other than that, it's hard to  
12 see. Well, I guess they got participation in RCI for the  
13 application layer.

14 Q But they paid for that.

15 A Right.

16 Q Why would -- why would CDK be concerned about a  
17 gracious exit from the integrator market?

18 A Well, these are customers of yours that you had  
19 difficulty serving, and you would like to preserve your  
20 reputation in the marketplace by having some sort of  
21 orderly wind down of your agreements to serve them.

22 Q Okay. Now, you agree that there's a market for  
23 third-party integration services, don't you?

24 A Not a relevant market for purposes of this case, no.

25 Q For purposes of DealerTrack, is there a market for

1 independent integration services?

2 A I don't understand what you mean.

3 Q Do you know what DealerTrack is?

4 A Yes, I do.

5 Q What is it?

6 A It's a DMS.

7 Q Correct. Now, do you know if Authenticom provides  
8 third-party integration services for DealerTrack?

9 A I believe they do.

10 Q Do you know if DMI provides integration services to  
11 DealerTrack vendors -- excuse me.

12 A I believe they do.

13 Q To vendors for use of DealerTrack?

14 A I believe they do.

15 Q Do you believe that they compete in providing those  
16 services?

17 A I would suspect they do, yes.

18 Q Okay. And is that a market, leaving aside whether  
19 it's a relevant market in this case, that's a market, is  
20 it not?

21 A That's a market.

22 Q And so it's a single brand market just for  
23 DealerTrack?

24 A I haven't looked into that, so I'd want to think  
25 about it.

1 Q Okay. But so there is competition for integration  
2 services with regard to dealers who use DealerTrack.

3 A Yes.

4 Q But there's no competition for integration services  
5 with respect to dealers who use CDK DMS.

6 A Today there is not.

7 Q And there's no competition for integration services  
8 with respect to dealers who use Reynolds DMS.

9 A Today there is not.

10 Q Okay. But both Reynolds and CDK sell integration  
11 services to vendors; isn't that true?

12 A They do.

13 Q Do you know if CDK allowed Authenticom to access CDK  
14 DMS for providing integration services prior to 2015?

15 A I don't recall.

16 MR. PANNER: No further questions.

17 THE COURT: Okay. Redirect? (7:05 p.m.)

18 REDIRECT EXAMINATION

19 BY MR. RYAN:

20 Q I think, Dr. Addanki, you were just asked a minute  
21 ago if Reynolds competes for integration services to  
22 vendors. Were you asked that question?

23 A No.

24 Q What was it? Do they compete for -- let me ask it  
25 this way: Reynolds only integrates for the Reynolds

1 dealers; right?

2 MR. PANNER: Objection. Leading.

3 THE COURT: I'll allow it. It will be efficient  
4 here. Let's just --

5 THE WITNESS: RCI is only for Reynolds DMS.

6 MR. RYAN: Thank you. Thank you. No further  
7 questions.

8 THE COURT: Okay. Thank you for your endurance.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: All right. So we're going to  
11 reconvene --

12 THE WITNESS: I'm done?

13 THE COURT: Yeah, you're free to go. You're  
14 released, as everyone will be very soon.

15 (Witness excused.)

16 THE COURT: Eight o'clock we'll reconvene. I  
17 understand you have one witness left; is that right? And  
18 so that is the counterpart to Dr. Klein?

19 MS. MILLER: Correct.

20 THE COURT: All right. And I think that can be  
21 brief. I'm anticipating that to be brief.

22 MS. MILLER: Yes, Your Honor.

23 THE COURT: My anticipation should be fulfilled.  
24 I'm not ordering you to restrain your examination, but I  
25 think it should be brief. And I think we have time in my

1 schedule to finish up that witness and then do your  
2 closing arguments. And I think you can tell from my  
3 questions what my concerns are, but let me just highlight  
4 a couple of things.

5 On the irreparable harm issue, I have what I think  
6 are a variety of worst case scenarios and kind of really  
7 pretty bad case scenarios from Dr. Klein. But it also  
8 strikes me that as I look back in the period between the  
9 wind-down agreement and the aggressive and successful  
10 blocking by Reynolds, and the Reynolds affected walking  
11 came first, but in that period between the really robust  
12 walking and integration agreement, it seemed like  
13 Authenticom was getting by. Obviously the walking is a  
14 huge blow to the business, but I don't see in that period  
15 that losing the Reynolds integration business was enough  
16 to put Authenticom under water. So I'd like to hear  
17 whether the irreparable harm could be parsed between CDK  
18 and Reynolds.

19 And in terms of -- and if I were to grant an  
20 injunction, for example, would I be able to say look, I  
21 think that Authenticom was getting by when it was only  
22 Reynolds doing the walking, but the CDK intervention and  
23 their going to a closed system put them over the edge.  
24 And I don't think that Dr. Klein really parsed those two  
25 things.

1       So in terms of crafting an injunction if I'm looking  
2 at the harm, do I have to enjoin both of the defendants  
3 or is one enough to do it? And I'm not sure that  
4 enjoining only one of them would be appropriate in any  
5 way. You can address that too if you want. But just in  
6 terms of the harm, it seems to me that the really  
7 catastrophic effects, and I don't know if this was the  
8 thing that got labeled as Apocalypse 2, but Apocalypse 1  
9 wasn't enough to prompt this lawsuit or send Authenticon  
10 over the edge, but subsequently it did. And of course, I  
11 realize I'm looking at the irreparable harm issues really  
12 without the benefit of the defense presentation on their  
13 expert. But that is a question that I have.

14       The other thing I would like to see in your closings  
15 is -- and the examinations have really brought this out a  
16 lot with Exhibit 1, defense Exhibit 1 which is what we've  
17 been calling the wind-down agreement which actually has a  
18 different title that I've completely forgotten by now  
19 because we always call it the wind-down agreement, but  
20 there were two corollate agreements that haven't been  
21 much discussed, and so I hope that counsel in their  
22 arguments -- they're in the record so it's in evidence.  
23 But I hope that the parties will make clear what they  
24 think the impact of those -- the two sort of subsidiary  
25 agreements are in the antitrust analysis.

1           And then I don't want you to think that my  
2 expression of these specific concerns really should  
3 completely cabin your closing arguments. I want you to  
4 articulate to me what you think is important, and I don't  
5 want you to just necessarily think that what I've been  
6 fixated on is really what's important. You guys really  
7 are the experts in these areas from a legal perspective,  
8 and so I want you to feel free to emphasize for me the  
9 points that you think are important regardless of  
10 whatever you think my preoccupations are. Because I do  
11 feel that I've been, as we've gone here, had a pretty  
12 free hand in asking questions of your witnesses. So I do  
13 feel as my concerns came up, I voiced them and got  
14 answers, to the extent that there were answers available.

15           So like I said, I don't want you to just exclusively  
16 focus on the things you think I'm interested in, really  
17 it's your closing so you tell me what you think I need to  
18 know.

19           So if I give you any more help tonight other than  
20 letting you go, if there's anything else. So like I  
21 said, we'll start at 8. We'll finish up the last  
22 witness, and then we'll do the closings.

23           MR. RYAN: Thank you, Your Honor.

24           THE COURT: Anything else?

25           MR. PANNER: Thank you, Your Honor.

1 THE COURT: See you tomorrow morning.

2 (Proceedings concluded at 7:10 p.m.)

3

4 \* \* \* \* \*

5 I, LYNETTE SWENSON, Certified Realtime and  
6 Merit Reporter in and for the State of Wisconsin, certify  
7 that the foregoing is a true and accurate record of the  
8 proceedings held on the 27th day of June 2017 before the  
9 Honorable James D. Peterson, District Judge for the  
10 Western District of Wisconsin, in my presence and reduced  
11 to writing in accordance with my stenographic notes made  
12 at said time and place.

13 Dated this 3rd day of July 2017.

14

15

16

/s/

17 Lynette Swenson, RMR, CRR, CRC  
18 Federal Court Reporter

19

20

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22 apply to any reproduction of the same by any means unless  
23 under the direct control and/or direction of the  
24 certifying court reporter.

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